

ESTTA Tracking number: **ESTTA633432**

Filing date: **10/16/2014**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91196299
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Date	10/16/2014
Attachments	2014 10 16 Response to MSJ-1.pdf(173790 bytes) 2014 10 16 Response to MSJ-Declaration of Smith-1.pdf(259559 bytes) 2014 10 16 Response to MSJ-Declaration of Cook-1.pdf(3770955 bytes)

1 **IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**
2 **BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

3 In the Matter of Trademark Application Serial No. 77/714,693

4 Mark: CONNECT

5 _____
6 CONNECT PUBLIC RELATIONS, INC., a
7 Utah corporation.

8 Opposer,

9 v.

10 DIGITALMOJO, INC., a California corporation

11 Applicant.
12 _____

Opposition No. 91196299

13 **APPLICANT'S RESPONSE TO OPPOSER'S**
14 **MOTION FOR SUMMARY JUDGMENT**

15 Applicant DIGITALMOJO, INC. ("DigitalMojo") hereby submits the following
16 Response to the Motion for Summary Judgment filed April 24, 2014 (the "Motion") by Opposer
17 CONNECT PUBLIC RELATION, INC. ("ConnectPR") in its opposition to dm's applicatin for
18 registration of its mark CONNECT (the "Mark," and the "Application" serial number
19 77/714,693). For the reasons set forth herein, DigitalMojo asserts that Respondent's Motion
20 should be DENIED.

21 This Response is supported by the brief embodied herein and the exhibits attached hereto,
22 including the Declaration of Martin Smith in Support of Applicant's Response to Opposer's
23 Motion for Summary Judgment (Exhibit 1 to this Response, the "Decl. Smith"), and the
24 Declaration of Thomas Cook in Support of Applicant's Response to Opposer's Motion for
25 Summary Judgment (Exhibit 2 to this Response, the "Decl. Cook"). This Response is also
26 supported by the following Exhibits, which accompany ConnectPR's Motion: (1) Exhibit 1, the
27 Affidavit of Neil Myers, with its accompanying Exhibits A-E ("Myers Aff."), and Exhibit 2, the
28 Affidavit of Dr. Glenn L. Christensen, with accompanying Exhibits A-D ("Christensen Aff.").

1 **I. INTRODUCTION**

2 ConnectPR has filed this opposition contending its registrations, set forth in its Exhibits 3
3 through 11, including its registrations No. 2,373,504 and No. 2,366,850, (collectively, the “CPR
4 Registrations”) control the issue of likelihood of confusion, and therefore control whether
5 DigitalMojo is entitled to registration of its mark CONNECT. The CPR Registrations identify
6 services broadly, as set forth in ConnectPR’s Statement of Undisputed Facts in the Motion. In
7 this opposition, ConnectPR has alleged that it owns the CPR Registrations “used in connection
8 with, *inter alia*, marketing and market research and consulting services; public media relations
9 services and sales promotion services.” ConnectPR has further alleged that its has used the
10 marks CONNECT PUBLIC RELATIONS and CONNECTPR and CONNECT (collectively, the
11 “CPR Marks”) in interstate commerce in the United States since at least as early as the dates of
12 first use recited in the CPR Registrations in connection with at least the goods and services
13 recited in the CPR Registrations , and that it is currently using the CPR Marks in interstate
14 commerce for such goods and services.

15 Based on discovery responses produced in this opposition, DigitalMojo believes two of
16 the CPR Registrations are themselves infirm, and so not a basis upon which ConnectPR may
17 prevail in this opposition. DigitalMojo has therefore filed Petitions to Cancel those two CPR
18 Registrations on August 22, 2011 for the reasons set forth in those cancellation actions (Decl.
19 Cook,¶3). DigitalMojo’s Petitions to Cancel the CPR Registrations have been allocated action
20 numbers 92054427, for CONNECT PUBLIC RELATIONS, and 92054395, for CONNECTPR
21 (collectively, the “Cancellation Actions”). On August 28, 2011, DigitalMojo, in this opposition
22 action, filed its Motion to Consolidate the Cancellation Actions with and into this opposition
23 action (Decl. Cook,¶ 4), and the Board subsequently consolidated DigitalMojo’s cancellation
24 actions into this opposition action..

25 ConnectPR is not entitled to summary judgment on the issues it presents in its Motion
26 because there remain genuine issues of material fact and conclusions of law as to whether
27 Digitalmojo’s mark CONNECT is likely to be confused with the marks CONNECT PUBLIC
28 RELATIONS and CONNECTPR registered by ConnectPR. More specifically, ConnectPR is not

1 entitled to summary judgment because (1) the facts which might lead to a conclusion of
2 likelihood of confusion have not been demonstrated, (2) ConnectPR is asserting likelihood of
3 confusion based on registrations for which it is not entitled (and which DigitalMojo has therefore
4 filed Petitions to Cancel, and requested joinder), and (3) we cannot conclude based on such
5 undetermined facts and infirm registrations, that the mark CONNECT is likely to be confused
6 with the marks of the CPR Registrations, or the with the CPR Marks.

7 8 **II. STATEMENT OF DISPUTED FACTS**

9 ConnectPR's Statement of Undisputed Facts is correct in part, and incorrect in larger part.
10 In any case, however, its statement is incomplete, and insufficient by itself to come to the
11 conclusion that Applicant's mark CONNECT is likely to be confused with the marks of the CPR
12 Registrations or the CPR Marks. The facts of this case which remain very much in dispute
13 include:

14 a. Whether DigitalMojo's mark CONNECT is sufficiently similar in sight, sound, or
15 meaning to the marks of the CPR Registrations, or the CPR Marks, to create "likelihood of
16 confusion," in light of numerous registrations of, and uses of, the word "connect," and whether
17 the these marks are "essentially identical," as opined by ConnectPR's expert, and whether a
18 determination that marks are "essentially identical" is relevant to these proceedings.

19 b. Whether the services identified in this application are related to the services
20 identified in the CPR Registrations, or the services which ConnectPR supplies under the CPR
21 Marks, in light of the narrow scope to which the word "connect" is entitled, given numerous
22 registrations and uses of the word "connect."

23 c. Whether DigitalMojo's mark CONNECT is likely to be confused with the marks
24 of the CPR Registrations, or the CPR Marks, in light of the "sophistication" of the market
25 ConnectPR serves.

26 d. Whether there is a meaningful distinction in offering services to consumers only,
27 as DigitalMojo intends (and as DigitalMojo has identified its services in the Application for its
28 mark CONNECT), and offering services to businesses only (which offer services to consumers)

1 as ConnectPR does. ConnectPR is making no fine distinctions here, whether in its own
2 assertions in the Myers Aff., or in the assertions of its “expert” in the Christensen Aff. (a subject
3 to which we will come back below), or in its argument in this Motion. In this regard,
4 DigitalMojo contends that its mark will be presented to consumers only, to supply consumer
5 services, while ConnectPR supplies services to businesses only. DigitalMojo’s conclusion from
6 the way it and ConnectPR supply their services to their respective “customers” is that
7 DigitalMojo’s services offered to consumers are not “related” to ConnectPR’s services offered to
8 businesses. The distinction DigitalMojo draws here is contrary to the view of ConnectPR as
9 expressed by its officer, Myers Aff. ¶49, but consistent with the Exhibits ConnectPR provides in
10 its Motion, Myers Aff., Exhibits A-E., and consistent with ConnectPR’s own description of itself
11 as a “marketing agency,” Myers Aff. ¶27, and its Exhibit E.

12 e. Whether the CPR Registrations in class 35 should be cancelled because CPR has
13 abandoned one or more of its registered marks.

14 f. Whether use by ConnectPR of the marks CONNECT PUBLIC RELATIONS and
15 CONNECTPR (the marks of the CPR Registrations) is use of the mark CONNECT sufficient to
16 say ConnectPR has generated a trademark right in CONNECT.

17 g. Whether ConnectPR has priority in the mark CONNECT through the use asserted
18 by ConnectPR, beyond its bare and unsupported assertion of such priority.

19 ConnectPR has referred, at length, to the Myers Aff. and the Christensen Aff. in regard to
20 some of these issues within its section titled “Statement of Undisputed Facts,” so DigitalMojo
21 must clearly say here that ConnectPR’s summary of “facts” contains many assertions which are
22 very much in dispute. More particularly, DigitalMojo notes that Myers makes a number of
23 assertions about use of the marks CONNECT and CONNECTPR in his affidavit, however the
24 evidence of such use Myers provides in support of his assertions, his “for examples” and other
25 evidence, show otherwise. DigitalMojo will address many of these points as it discusses the
26 Myers Aff. at an appropriate point below.

27 As to Christensen, this “expert” bounces around in his reasons why the services identified
28 by DigitalMojo are related to the goods and services found in the CPR Registrations, and never

quite settles on the correct test. Starting with (a number of) false standards, Christensen, like Myers, fails to apply facts to rules of law. Christensen's conclusions are therefore beyond unreliable, they are unreasonable, as we will demonstrate.

III. LEGAL STANDARD FOR SUMMARY JUDGMENT

DigitalMojo agrees with ConnectPR's statement of the legal standard for summary judgment.

IV. DIGITALMOJO IS ENTITLED TO SUMMARY JUDGMENT IN THE PETITIONS FOR CANCELLATION, RATHER THAN CONNECTPR, BECAUSE THERE IS NO GENUINE DISPUTE THAT CONNECTPR HAS ABANDONED ITS CONNECTPR MARK

A. *Legal Standard for Proving Abandonment*

DigitalMojo agrees with ConnectPR in its statement of the legal standard for abandonment of a trademark or service mark.

B. There is no Genuine Dispute that ConnectPR has Discontinued Use of CONNECTPR, With Intent Not to Use This Mark in the Future, and So the Registration of CONNECTPR Should Now be Cancelled.

While DigitalMojo agrees with the legal standards set forth by ConnectPR, the facts presented by ConnectPR in its Motion should result in cancellation of the mark CONNECTPR in Class 35. In support of its contention that there is no genuine dispute that ConnectPR has not discontinued use of its marks CONNEC PUBLIC RELATIONS and CONNECTPR, ConnectPR relies heavily on the declaration of Neil Myers in the Myers Aff. However, as we noted above under "undisputed facts," Myers declaration is not supported by the documents of his exhibits. More particularly, DigitalMojo notes that Myers makes a number of assertions about use of the marks CONNECT and CONNECTPR in his affidavit, however the evidence of such use Myers provides in support of his assertions, his "for examples" and other evidence, show:

i. what appears to be a "mock up," with the word SERVICES overlayed across the words "blog" and "contact," hardly the way one would expect ConnectPR to use "all of the Connect Marks in interstate commerce." Myers Aff. ¶21, and its Exhibit E, sheet 3.

1 ii. Non-trademark use by ConnectPR, such as the mention of the word
2 “connect” in the question “Why Connect?,” and such as references to ConnectPR the company.
3 Myers Aff. ¶23, and its Exhibit A, at CPR 002178 and CPR 002178 and CPR 002187.

4 iii. Trademark use of the mark CONNECT PUBLIC RELATIONS (with and
5 without design elements) as ConnectPR it was using this mark at some known time in the past,.
6 Myers Aff. ¶23, and its Exhibit A, at CPR 002171 and CPR 002189 and CPR 002191.

7 iv. Undated trademark use of the mark CONNECT PUBLIC RELATIONS
8 (with and without design elements), and non-trademark use, such as references to ConnectPR the
9 company. Myers Aff. ¶24, and its Exhibit B.

10 v. Undated trademark use of the mark CONNECT PUBLIC RELATIONS
11 (without design elements), wherein ConnectPR does not present any other of the CPR Marks.
12 Myers Aff. ¶25, and its Exhibit C, at CPR 001185 through CPR 001202. This use of some, but
13 not all, of the CPR Marks runs throughout the Exhibits attached to the declarations of Myers and
14 Christensen under circumstances which can only lead to the conclusion that ConnectPR has not
15 used the mark CONNECT, and ConnectPR is no longer using CONNECTPR, and intends not to
16 use CONNECTPR in the future. We note some of these circumstances below.

17 vi. Trademark use of the marks ConnectPR says it is now using, which show
18 use of the marks CONNECT MARKETING and CONNECT PUBLIC RELATIONS and
19 CONNECT STRATEGIC and CONNECT SOCIAL and CONNECT STUDIOS, wherein
20 ConnectPR does not present either CONNECT (alone, without other words), or CONNECTPR.
21 We note as to this recent use of these marks that ConnectPR purports to inform viewers that
22 these brands, and these brands only, are the “four parts of our new brand” as ConnectPR
23 welcomes viewers to the brand new “Connect Marketing.” Myers Aff., ¶26, and its Exhibit D, at
24 CPR 003114. We also note that ConnectPR even provides us with a “site map” of the web page
25 to which Myers refers, with the mark CONNECT MARKETING and all “four parts of our new
26 brand.” Again, ConnectPR presents all five of its brands without any presentation of the mark
27 CONNECT (without other words), and without any presentation of the mark CONNECTPR.
28 Myers Aff., ¶26, and its Exhibit D, at CPR 003128 and throughout Exhibit D. CONNECTPR is

one of the marks DigitalMojo asserts as been abandoned, such that the registration of CONNECTPR should be cancelled in these actions.

vii. What appears to be a “mock up” pages with various of the CPR Marks overlayed across the words “blog” and “contact,” hardly the way one would expect ConnectPR to use the CPR Marks in interstate commerce.” Myers Aff. ¶27, and its Exhibit E. Exhibit E is also interesting, as ConnectPR’s “current website,” as ConnectPR again here presents its new mark CONNECT MARKETING, and the four new marks of ConnectPR’s “four divisions” as it “transitions” to “a full-service high tech marketing agency.” Myers Aff. ¶27, and its Exhibit E, at <http://www.connectmarketing.com/about.asp>. While ConnectPR again appears to be telling the world CONNECT MARKETING and the four new marks of ConnectPR’s “four divisions” are all of ConnectPR’s brands, presently and in the future, ConnectPR again does not at the same time say it is using the mark CONNECT (one word), and ConnectPR again does not say ConnectPR is using the mark CONNECTPR, nor does ConnectPR present these marks in this Exhibit E.

viii. The CPR Marks, registrations of which DigitalMojo wishes to cancel, presented in what appears to be a “mock up,” with various of the CPR Marks overlayed across the words “blog” and “contact,” hardly the way one would expect ConnectPR would wish to “use the CPR Marks in interstate commerce,” Myers Aff. ¶51, and its Exhibit E. Once again ConnectPR presents the “four parts of our new brand” as ConnectPR welcomes viewers to “Connect Marketing,” Myers Aff., ¶51, and its Exhibit D, at CPR 003114, and ConnectPR presents its mark on its site map, with all five of its brands, without any presentation of the mark CONNECT (without other words), and without any presentation of CONNECTPR, Myers Aff., ¶51, and its Exhibit D, at CPR 003128 and throughout Exhibit D.

ix. What appears to be an admission by ConnectPR, that it is using only CONNECT MARKETING and the “four parts of our new brand” (see reference in viii above), as ConnectPR informs the world of its business using a “graphic representing the new hierarchy of Connect’s marks under CONNECT MARKETING.” Myers Aff., ¶54, with graphic. Notably, the graphic to which Myers refers does not show the CONNECTPR mark to be cancelled here,

1 nor does it show the mark CONNECT, as part of “the new hierarchy.” Moreover, Myers
2 specifically states one of the marks in the graphic is CONNECT PUBLIC RELATIONS as a
3 demonstration that this mark is being used, without mentioning the mark CONNECTPR, the
4 registration of which should be cancelled in this action. And yet further, Myers does not say the
5 mark CONNECT is part of “the new hierarchy,” despite the fact that this graphic has been
6 presented to the public to explain ConnectPR’s future brand usage, and despite Myers
7 protestation that ConnectPR’s “adoption of the CONNECT MARKETING mark was nothing
8 more than an expansion of Connect’s services services...” Myers Aff., ¶55 and ¶56. Finally,
9 DigitalMojo asserts that Myers’ statement that ConnectPR is using CONNECT PUBLIC
10 RELATIONS in this same graphic is an admission that the presentation of these three words
11 together, regardless of the differences in size between “connect” and “public relations,” is a use
12 of CONNECT PUBLIC RELATION, and not a use of CONNECT.

13 As to the declaration of Christensen, he is an “expert” hired by ConnectPR, and
14 apparently not an officer or director of ConnectPR. He therefore has no personal knowledge of
15 the marks being used by ConnectPR, and no personal knowledge of ConnectPR’s intent to use its
16 marks in the future, except as such knowledge is related to him by ConnectPR, or by other means
17 which are not entirely explained. If ConnectPR told Christensen of ConnectPR’s present use of
18 its marks, or its intent to use its mark in the future, such knowledge by Christensen is hearsay and
19 inherently unreliable. Christensen does say how he acquired his information on use of
20 ConnectPR’s marks in his declaration, Christensen Aff., ¶48, as ConnectPR says. However,
21 Christensen first states facts about past use, as he discusses the Internet Archive, facts which are
22 not relevant to the question of abandonment. Christensen then says he looked “at the printout of
23 Connect’s website as of March 21, 2013,” a printout which, we may reasonably assume, was
24 supplied to him by ConnectPR. Finally, Christensen says “it is clear, in my opinion, that
25 Opposer is currently and actively using both the CONNECTPR and the CONNECT PUBLIC
26 RELATIONS marks.” He comes to this conclusion after “[a]ccessing Opposer’s website
27 recently.” Christensen does not say when he accessed Opposer’s website except to say, via
28 footnote, that he accessed Opposer’s website February 10, 2014. Eight months ago, as of this

1 writing, is not very “recently” when the issue is abandonment. Nor does Christensen say where
2 he accessed Opposer’s website, and we must conclude it is possible Christensen accessed
3 Opposer’s website at the offices of his client, Opposer ConnectPR. Under such circumstances,
4 we may also reasonably assume his “access” to the “website” was under the control of
5 ConnectPR, and the materials he viewed were no more genuine than the March 21, 2013
6 “printout” supplied by his paying customer. Christensen’s failures in regard to the facts about
7 ConnectPR’s present use may be appreciated when we note he does not supply any documents as
8 he comes to these conclusions.

9 ConnectPR has not demonstrated there is no genuine dispute as to any material fact
10 regarding use of the CPR Marks set forth in CPR Registrations in class 35. ConnectPR is
11 therefore not entitled to summary judgment on the issue of abandonment of the CPR Marks of
12 the CPR Registrations. ConnectPR has, on the other hand, with its own declarations by Myers
13 and Christensen, demonstrated that ConnectPR is no longer using the mark CONNECTPR, and
14 that ConnectPR intends not to resume use of this mark in the future (see the observations we
15 make in points v. through ix above). ConnectPR has therefore with its declarations demonstrated
16 its abandonment of the CONNECTPR mark, the registration of which should be cancelled in
17 these consolidated actions.

18 ConnectPR even argues it is still using the mark CONNECTPR by reciting how its is
19 “expanding” is brand, and it presents what appears to be all of its brands, without once
20 mentioning either the mark CONNECT (single word) or the mark CONNECTPR. See all of
21 pages 11 and 12 of ConnectPR’s argument). With its declarations and its argument, ConnectPR
22 has provided DigitalMojo with the evidence necessary to reasonably conclude there is no genuine
23 dispute as to any material fact on the question of ConnectPR’s abandonment of the mark
24 CONNECTPR, and that ConnectPR has in fact abandoned that mark. As a consequence, the
25 registration of the mark CONNECPR in class 35 should now be cancelled.

26 ConnectPR has also not demonstrated there is no genuine dispute as to any material fact
27 regarding its use of the mark CONNECT. To the contrary, the observations we make in points v
28 through ix above, and particularly in point ix above, lead us to the conclusion that ConnectPR is

not now using the mark CONNECT (single word), and ConnectPR may never have used the mark CONNECT (single word).

V. CONNECTPR IS NOT ENTITLED TO SUMMARY JUDGEMENT IN ITS OPPOSITION BECAUSE THERE IS A GENUINE DISPUTE ABOUT MATERIAL FACTS NECESSARY TO DETERMINE LIKELIHOOD OF CONFUSION

A. Legal Standard for Likelihood of Confusion

ConnectPR cites E.I. duPont de Nemours and Co. for the “likelihood of confusion factors” the Board must consider based on an analysis of all of the facts in evidence. However, here again ConnectPR, making no fine distinctions, directs the Board’s attention to only two of the duPont factors. Certainly the similarities between the marks and the similarities between the goods and/or services are, as ConnectPR implies, important. However, as the Court in duPont advised, each of the DuPont factors may, from case to case, play a dominant role. DigitalMojo asserts the following duPont factors (as they were numbered in duPont) are dominant within the meaning of the holding in duPont, and these factors must also be considered as the Board considers the similarities between the marks and the similarities between the goods and/or services:

- (3) The similarity or dissimilarity of established, likely-to-continue trade channels.
- (4) The conditions under which and buyers to whom sales are made, i. e. "impulse" vs. careful, sophisticated purchasing.
- (5) The fame of the prior mark (sales, advertising, length of use).
- (6) The number and nature of similar marks in use on similar goods.

The fact that two or more marks may share some similarities is therefore not, by itself, dispositive of the issue of likelihood of confusion. Confusion can be considered unlikely even in a case where the marks are nearly identical, as long as other factors in the analysis of confusing similarity outweigh the marks' similarities, such as where there are a significant number of similar marks currently co-existing in the marketplace and on the Register, where the services are different and highly specialized, the relevant consumers are sophisticated, the channels of trade are different, and other factors weigh in favor of the marks' ultimate distinguishability. When the

1 Board considers the test for determining whether two marks are confusingly similar, it often
2 includes the following significant (duPont and other) factors, among others: (1) the existence of
3 multiple similar registrations for similar products or services co-existing on the Principal
4 Register; (2) the relatedness of the goods and/or services identified by each mark; (3) the
5 sophistication of the relevant consumers, and the care typically exercised by such consumers in
6 selecting the provider of goods and/or services; and (4) the similarity in the channels of trade.
7 See T.M.E.P. § 1207.01 (2007). The Board must consider these factors, along with other
8 pertinent factors "if relevant evidence is contained in the record." T.M.E.P. § 1207.01 (citing In
9 re Majestic Distilling Co., 315 F.3d 1311, 1315 (Fed. Cir. 2003)). No one factor is determinative
10 of the likelihood of confusion. Rather, the Board must look at the cumulative effect of the
11 factors. The factors are interrelated and must be considered together as an "amalgam." See Sun
12 Fun Prods. v. Suntan Resources & Dev., Inc., 656 F. 2d 186, 189, 213 U.S.P.Q. 91, 93 (5th Cir.
13 1981).

14
15 B. There is a Genuine Dispute Whether the CPR Marks and the Opposed Mark are
16 Substantially Similar in Appearance, Sound, Meaning and Commercial
Impression

17 At the outset, DigitalMojo submits that the ConnectPR's Marks are "weak" and subject
18 only to a very narrow scope of protection because numerous different versions of marks which
19 contain the word "connect" have been allowed at the USPTO, and such marks have coexisted
20 and continue to exist on the register with the ConnectPR Registrations. Third-party registrations
21 may be relevant to show that the mark, or a portion of the mark, is so commonly used that
22 prospective purchasers will look to other elements to distinguish the source of the services.
23 T.M.E.P. § 1207.01 (d)(iii). For purposes of this Motion, the Board may take note the numerous
24 records appearing on its own records for marks which contain the word "connect," and even such
25 "connect" marks which identify "marketing" and related services. The weakness of ConnectPR's
26 Marks is evidenced by the numerous other identical and near identical third-party marks
27 presently co-existing on the USPTO register, and evidenced in the Decl. Cook, ¶5 and ¶6).

1 We may gather from such registrations that marks containing the same term(s) have been
2 registered for related goods and services because prospective purchasers are accustomed to
3 distinguishing among the marks. *Id.*, 222 U.S.P.Q. 174, 177 (T.T.A.B. 1984). If evidence of
4 third-party use establishes that the consuming public is exposed to third-party use of similar
5 marks on similar goods and services, this evidence "is relevant to show that a mark is relatively
6 weak and entitled to only a narrow scope of protection." *Palm Bay Imports, Inc. v. Veuve*
7 *Clicquot Ponsardin Maison Fondée en 1772*, 396 F.3d 1369, 1373, 73 U.S.P.Q.2d 1689, 1693
8 (Fed. Cir. 2005). See also *Amstar Corp. v. Domino's Pizza, Inc.*, 615 F.2d 252, 29 Fed.R.Serv.2d
9 1528, 205 U.S.P.Q. 969 (5th Cir., 1980) (finding that 72 third-party registrations for marks
10 containing the term DOMINO but used in various industries limits the scope of rights in the mark
11 to the goods specifically identified in the registration, and thus, sufficient to hold that no
12 likelihood of confusion exists between DOMINO for sugar and DOMINO for pizza, despite the
13 obvious fact that the identical marks are both used for food products purchased by individual
14 consumers). Where a mark is weak and not entitled to a broad scope of protection, other marks
15 can "come closer to [the cited] mark than would be the case with a strong mark without violating
16 [the party's] rights." *Kenner Park Toys, Inc. v. Rose Art Indus., Inc.*, 963 F.2d 350, 353, 22
17 U.S.P.Q.2d 1453, 1456 (Fed. Cir. 1992) (quoting *Sure-Fit Prods. Co. v. Saltzson Drapery Co.*,
18 254 F.2d 158, 160, 117 U.S.P.Q. 295, 296 (C.C.P.A. 1958)).

19 DigitalMojo asserts that third-party registrations clearly support the argument that
20 identical CONNECT marks can - and do - coexist on the USPTO web site for use in connection
21 with goods and services that are far more closely related than the services provided by
22 DigitalMojo and ConnectPR. Indeed, many of these commonplace products and services are sold
23 to everyday consumers (in contrast to ConnectPR's specialized services and sophisticated
24 business customers) yet the PTO has nonetheless concluded that there is no likelihood of
25 confusion between these prior "connect" marks.

26 The number of "CONNECT" marks coexisting on the USPTO web site greatly limit the
27 scope of protection granted to the Registrant (as well as other registrants) in the term
28 "CONNECT," and renders it unlikely that customers will be confused by DigitalMojo's mark

1 when considering the services offered by ConnectPR and those offered by DigitalMojo. Just as
2 in the *Amstar* case (permitting the DOMINO mark to coexist for both sugar and pizza), the
3 existence of so many registered "CONNECT" marks limits the scope of rights in the
4 ConnectPR's Mark, and renders it unlikely that customers would be confused by the registration
5 of DigitalMojo's Mark, particularly since the customers for the services of ConnectPR are, by its
6 own statements, all sophisticated, careful customers spending significant sums of money to
7 employ ConnectPR's expensive, "business" marketing services - far more so than the individual
8 consumers purchasing household services and social and business networking services offered by
9 DigitalMojo.

10 DigitalMojo specifically notes here that ConnectPR does not discuss similar third-party
11 marks, those which contain the word "connect." Mr. Neil Myers, ConnectPR's "founder and
12 President," for instance, limits his discussion to perceptions about how ConnectPR's customers
13 perceive the term "connect," and about the broad use of other terms within ConnectPR's
14 industry. ConnectPR's "expert," Dr. Glenn L. Christensen, also does not mention any similar
15 marks, whether registered or simply used. Dr. Christensen does correctly opine "When
16 conducting an analysis of any trademark, the whole mark in its totality must be considered in
17 forming an opinion." Christensen Aff. ¶15. However, he then goes on to discuss "dominant
18 portions" of marks, and then provides, in the next sentence, his opinion "that the dominant,
19 initial portion 'connect' of the word mark [without saying which word mark] is the aspect of the
20 mark [again without saying which word mark] customers will rely on as a source identifier."

21 DigitalMojo asserts any "analysis" of confusing similarity between marks which ignores
22 the distinctiveness of the words of the compared marks said to be "highly similar" is
23 fundamentally flawed, and incomplete. The distinctiveness of the word CONNECT in this
24 opposition is a disputed issue, central to the question of likelihood of confusion (and controlling
25 in DigitalMojo's view). DigitalMojo also asserts "analysis" of confusing similarity between
26 marks which lacks a discussion of the "sophistication" of prospective purchasers is also flawed
27 and incomplete. For this reason, DigitalMojo has addressed this issue in this Response, and in
28 the Decl. Cook, ¶9- ¶11, and , and in the Decl. Smith, ¶14, and DigitalMojo concludes that the

sophisticated business “clients” of ConnectPR are not likely to be confused by registration and use of DigitalMojo’s mark CONNECT as it provides services to consumers. This discussion is of course necessary to any determination of whether the services of DigitalMojo are “related” to those of ConnectPR, however it is also necessary to any determination of whether DigitalMojo’s mark CONNECT is sufficiently similar in appearance, sound, connotation and commercial impression to the CPR Marks. For these reasons, the affidavits by Meyers and Christensen submitted by ConnectPR with its Motion fail to consider factors necessary to forming a reasonable opinion. Such affidavits should be considered by the Board merely self-serving statements, and without value in deciding the Motion. The distinctiveness of the word CONNECT in this opposition, and the sophistication of ConnectPR’s “clients,” are a disputed issues, central to the question of likelihood of confusion (and controlling in DigitalMojo’s view).

With these comments on the “weakness” of ConnectPR’s Marks, and the resultant “narrow scope of protection” to which such weak marks are entitled (particularly given the sophistication of ConnectPR’s clients), DigitalMojo turns to ConnectPR’s argument about the similarity between DigitalMojo’s mark CONNECT and the CPR Marks.

1. There is a Genuine Dispute Whether ConnectPR has Used the Word “connect” As a Mark to Generate Trademark Rights in its Claimed Mark CONNECT.

As to ConnectPR’s claim that DigitalMojo’s mark CONNECT is “exactly identical to Connect’s common law mark CONNECT in appearance and sound,” and its opinion about the connotations of these marks, ConnectPR relies on the statements of Myers. However, Myers is clear about ConnectPR’s rebranding, and ConnectPR’s new marks after such rebranding, as ConnectPR informs the world of its business using a “graphic representing the new hierarchy of Connect’s marks under CONNECT MARKETING.” Myers Aff., ¶54, with graphic. Notably, the graphic to which Myers refers does not show the mark CONNECT, as part of “the new hierarchy.” Further, Myers does not say the mark CONNECT is part of “the new hierarchy,” despite the fact that this graphic has been presented to the public to explain ConnectPR’s future brand usage. Myers Aff., ¶55 and ¶56. DigitalMojo asserts that Myers’ statement that

1 ConnectPR is using CONNECT PUBLIC RELATIONS in this same graphic is an admission that
2 the presentation of these three words together, regardless of the differences in size between
3 “connect” and “public relations,” is a use of CONNECT PUBLIC RELATION, and not a use of
4 CONNECT, and that ConnectPR does not use the word “connect” as a mark. Decl. Cook, ¶16.
5 While Myers alleges ConnectPR has used and it using the word “connect” as a mark, he provides
6 in support of these assertions only evidence which identifies ConnectPR as a company, or which
7 mention the word “connect” in the question, such as “Why Connect?” and other non-trademark
8 use, and ambiguous presentations of the word “connect.” Myers Aff. ¶23, and its Exhibit A, at
9 CPR 002178 and CPR 002178 and CPR 002187, and Decl. Cook, ¶16. DigitalMojo asserts that
10 ConnectPR has not demonstrated there is no genuine dispute as to any material fact regarding its
11 use of the mark CONNECT. To the contrary, the observations we make above lead us to the
12 conclusion that ConnectPR is not now using the mark CONNECT (single word), and ConnectPR
13 may never have used the mark CONNECT (single word). Without use of CONNECT as a mark,
14 ConnectPR’s assertion that “[t]he Opposed Mark is exactly identical to Connect’s common law
15 mark CONNECT...” has no meaning in a case about trademarks.

16
17 2. There is a Genuine Dispute Whether the Opposed Mark is Sufficiently
18 Similar in Appearance, Sound, Connotation and Commercial Impression
to ConnectPR’s CONNECT PUBLIC RELATIONS Mark

19 In discussing the similarity between DigitalMojo’s mark CONNECT and the CPR Marks,
20 ConnectPR asserts the word “connect” is the “first and dominant” term in ConnectPR’s mark
21 CONNECT PUBLIC RELATIONS. However, given the narrow scope of protection to which the
22 word “connect” is entitled, we cannot fairly come to the conclusion that the word “connect” is
23 the dominant feature in ConnectPR’s mark CONNECT PUBLIC RELATIONS. Instead, it is
24 appropriate in this case to analyze likelihood of confusion in light of each word within
25 ConnectPR’s mark (i.e., each mark as a whole). It is well settled that a mark should not be
26 dissected, but rather must be considered as a whole in determining likelihood of confusion.
27 *Franklin Mint Corp. v. Master Manufacturing Co.*, 667 F.2d 1005, 212 USPQ 233, 234 (CCPA
28 1981). We see exceptions to the general rule regarding additions or deletions to the “dominant

portion” when: (1) the marks in their entireties convey significantly different commercial impressions; or (2) the matter common to the marks is not likely to be perceived by purchasers as distinguishing source because it is merely descriptive or diluted [TMEP]1207.01(b)(iii).

DigitalMojo asserts its mark CONNECT and the ConnectPR CONNECT PUBLIC RELATIONS mark fall within both of these exceptions to this general rule, as DigitalMojo’s mark conveys a significantly different commercial impression than ConnectPR’s Marks when each mark is considered in its entirety, and with due regard to the non-distinctiveness and descriptiveness of the word “connect.” The word common to these marks, i.e., “connect,” is not likely to be perceived by purchasers as distinguishing source because it is merely descriptive or diluted. DigitalMojo submits that it is highly unlikely that the use of its mark would cause any confusion among the myriad of CONNECT marks (see again Decl. Cook, ¶5 and ¶6), and in particular with the CONNECT PUBLIC RELATIONS mark of ConnectPR. In any case, however, the question of likelihood of confusion cannot be determined without addressing the issue of the distinctiveness of the word “connect,” and the sophistication of ConnectPR’s “clients,” facts which have not been addressed by ConnectPR in its Motion, or by its officer Meyers, or by its “expert” Christensen, in their Affidavits in support of its Motion.

1. There is a Genuine Dispute whether the Opposed Mark is Sufficiently Similar in Appearance, Sound, Connotation and Commercial Impression to ConnectPR’s CONNECTPR Mark

In discussing the similarity between DigitalMojo’s mark CONNECT and the CPR Marks, ConnectPR also asserts the word “connect” is the “dominant” feature in ConnectPR’s mark CONNECTPR. Myers of ConnectPR goes on to say “the last two letters ‘p’ and ‘r’...are known in the industry as an acronym for ‘public relations’” (tellingly, Myers does not identify which “industry”), and concludes CONNECTPR and CONNECT are “highly similar.”

DigitalMojo asserts that ConnectPR’s mark CONNECTPR has been abandoned (see comments in this Response above at IV.B.vi through IV.B.ix.), as demonstrated by the Myers Aff and its exhibits. In any case, however, it is again appropriate in this case to analyze likelihood of confusion in light of each mark as a whole, as a mark should not be dissected but rather must be

1 considered as a whole in determining likelihood of confusion. And again the question of
2 likelihood of confusion cannot be determined without addressing the issue of the distinctiveness
3 of the word “connect” (see again Decl. Cook, ¶5 and ¶6), and the question of the sophistication
4 of ConnectPR’s “clients,” facts which have not been addressed by ConnectPR in its Motion, or
5 by its officer Meyers, or by its “expert” Christensen, in their Affidavits in support of its Motion.

6
7 *C. There is a Genuine Dispute whether the Services Identified in the Registrations of*
8 *the CPR Marks and the Services Identified in the Application for the Opposed*
9 *Mark are Related*

10 ConnectPR asserts likelihood of confusion may be found (assuming the marks are
11 sufficiently similar in sight, sound, or meaning) when the respective services of the parties are
12 related in some manner, and/or that the conditions and activities surrounding the marketing of the
13 services are such that they would or could be encountered by the same persons under
14 circumstances that could, because of the similarity of the mark, give rise to the mistaken belief
15 that they originate from the same source. DigitalMojo agrees this is the proper test. However,
16 the factual questions we must answer to decide whether DigitalMojo’s services are related to
17 ConnectPR’s services are questions which, when answered, assist us to define the markets of
18 ConnectPR and DigitalMojo. These questions include questions such as “who receives our
19 marketing materials,” and “how do we reach our market.”

20 ConnectPR does not in its Motion address these kinds of questions, or any questions
21 which assist us in identifying its markets, or the markets to be served by DigitalMojo. This
22 failure to address these questions results directly from ConnectPR’s failure to address the
23 limitations set forth in DigitalMojo’s application for the mark CONNECT, and the limitations set
24 forth in the identifications of services found in the CPR Registrations. Instead of fairly
25 considering all the wording of these identifications, ConnectPR selects certain words because
26 they are common to these identifications, and ignores other “limiting” words found in all
27 identifications. Moreover, ConnectPR does not address the very real distinction between
28 offering services directly to consumers, as DigitalMojo’s limitations imply for the services
DigitalMojo has identified, and offering services to businesses, as ConnectPR’s limitations imply

1 for its registrations. These subjects we will address below in more detail, particularly as the
2 identified services offered under DigitalMojo's "consumer facing" mark (services offered to
3 consumers under the mark CONNECT) differs, given the full text of the identification of services
4 for this application, from the identified services found in the CPR Registrations.

5 Before we address specific services, however, we again note that any "analysis" of
6 whether the services identified by DigitalMojo in its application for CONNECT are "related" to
7 the identified services in the CPR Registrations which ignores the distinctiveness of the words of
8 the compared marks, and also ignores the sophistication of those who purchase DigitalMojo's
9 and ConnectPR's services, is fundamentally flawed, and incomplete. This is where the "expert"
10 Christensen fails most miserably. As we note above, Christensen bounces around in his reasons
11 why the services identified by DigitalMojo are related to the goods and services found in the
12 CPR Registrations, and never quite settles on the correct test. For instance Christensen opines it
13 is important: (i) whether Applicants' identified services are "a form or subset of the
14 marketing activities that is part of Opposer's registrations," and (ii) whether such "subset" is
15 sufficient to conclude there is "more than a 'relationship' between the Opposer's goods and
16 services and Applicant's proposed goods and services," and (iii) whether "a form or subset"
17 (Christensen Aff., Para. 32) is the correct test, and (iv) whether "a subset, type, or subcategory"
18 (Christensen Aff., Para. 33, and Paras 35 - 40,) is the correct test, and (v) whether "quite similar
19 and even identical as a subset" (Christensen Aff., Para. 42, 43) may be used to determine whether
20 the services identified in DigitalMojo's Application are "related" to the services ConnectPR says
21 it is supplying under the CPR Marks (a determination necessary to "likelihood of confusion"
22 analysis). At bottom Christensen's conclusions, starting with (a number of) false standards and
23 varying tests for "related" services, and "analyzing" without applying our facts to his rules of
24 law, are beyond unreliable, they are unreasonable.

25 The distinctiveness of the word CONNECT in this opposition is a disputed issue, central
26 to the question of likelihood of confusion (and controlling in DigitalMojo's view). The question
27 of likelihood of confusion cannot be determined without addressing the issue of the
28 distinctiveness of the word "connect," and addressing the sophistication of ConnectPR's

1 “clients.” And distinctiveness of “connect” will depend on the number of marks which contain
2 this word, facts which have not been addressed by ConnectPR in its Motion, or by its officer
3 Meyers, or by its “expert” Christensen, in their Affidavits in support of its Motion.

4 Turning to ConnectPR’s first “analysis” of the identification of DigitalMojo’s services in
5 Class 35, ConnectPR asserts that such services “overlap with, are a subset of, or are identical to,
6 the services for Connect’s Class 35 registrations and its common law mark CONNECT” (as if
7 classification were controlling on the question of likelihood of confusion). We will deal with
8 this question at some length in order to elaborate on the failure in methodology ConnectPR
9 exhibits in its “analysis” of likelihood of confusion about class 35 services, as ConnectPR fails in
10 this regard in its analysis about other classes. We think we can thereby shorten DigitalMojo’s
11 response to ConnectPR’s assertions about the relationship between its other classes.

12 We first note (again) that, while Myers asserts ConnectPR has used the word “connect” as
13 a mark, he provides no clear evidence of this (see our comments on non-trademark use above).
14 As to ConnectPR’s assertions about the “overlap” and “subset” of DigitalMojo’s identified
15 services, ConnectPR relies heavily on the words “marketing” and “services” conjoined, and in
16 some cases on the word “marketing” by itself. ConnectPR characterization of its services,
17 however, misses the mark, because it fails to address the additional, descriptive wording found in
18 the identifications of services found in the CPR Registrations and in DigitalMojo’s Application.
19 In the following analysis, and because ConnectPR selectively uses words in its comparison of of
20 goods and services to emphasize the similarities, we *add back* the words ConnectPR has
21 identified in its registration, but not thought important enough to mention in this Motion, and *add*
22 *back* the words DigitalMojo uses in this application.

23 ConnectPR’s “**marketing** and market research and consulting **services**; public and media
24 relations services and sales promotion services” (ConnectPR’s emphasized words in **bold**) are on
25 their face services directed to businesses. The obvious import from such words is that such
26 businesses, utilizing the services of ConnectPR, are assisted in their marketing efforts. That is,
27 such businesses are assisted in presenting *their* marks (i.e., the marks of ConnectPR’s clients) to
28 the consuming public. Under such circumstances, the CPR Marks are not presented to the

1 consuming public, but only to ConnectPR's business clients (see Decl. Smith, ¶9 through ¶13,
2 and Decl. Cook, ¶12 and ¶13). The whole idea for ConnectPR is to create a larger, better
3 commercial impression for the marks of its clients.

4 DigitalMojo's "**Business marketing services** in the nature of agency representation of
5 companies marketing a variety of services to home owners and renters, namely, utility hook-ups,
6 telecommunication services, home security services, home warranties, home and yard
7 maintenance, furniture and appliance rental" (ConnectPR's emphasized words in **bold**) are on
8 their face services directed to "consumers" (that is, those who utilize the services of businesses).
9 The obvious import from such words is that such consumers, utilizing the services of
10 DigitalMojo, are assisted in their efforts to find the right business to supply the desired services
11 (e.g., "utility hookups") those consumers desire. That is, consumers seeking services are assisted
12 in their search when they find DigitalMojo using its mark CONNECT, which is presented to the
13 consuming public, to eventually find the business which will supply the desired service.¹ Under
14 such circumstances, DigitalMojo's mark CONNECT is presented only to the consuming public
15 (see Decl. Smith, ¶9 through ¶13, and Decl. Cook, ¶12 and ¶13). The whole idea for
16 DigitalMojo is to create an efficient conduit, using its mark CONNECT, from consumers, with
17 their needs, to the businesses which can satisfy those consumer needs, as DigitalMojo presents
18 CONNECT to such consumers (only).²

19 Turning to the Affidavits of Myers and Christensen attached to ConnectPR's Motion, we
20 see "analysis" of whether the services identified by DigitalMojo in its application for CONNECT
21 are "related" to the identified services in the CPR Registrations, which analysis ignores the
22 distinctiveness of the word "connect," and the sophistication of those who perceive these marks.
23 Each such Affidavit is therefore fundamentally flawed, and incomplete.

24
25 ¹ "Consumer is a broad label for any individuals or households that use goods generated within the economy."
26 <http://en.wikipedia.org/wiki/Consumer>

27
28 ² We note here that DigitalMojo's mark CONNECT goes before the consuming public, while its corporate name
DigitalMojo, Inc. is the name it presents to businesses.

1 Moreover, Myers exhibits confusion about the very real distinction between “consumers,”
2 on the one hand, and ConnectPR’s clients, on the other hand. We can see this quite clearly by
3 referring to Myers’ attached Exhibit C, which purports to be a proposal to a telecommunications
4 company, “Utopia,” complete with sections titled “Executive Summary,” and “Project Goals,”
5 and the like. “Utopia,” the company to which ConnectPR is marketing its services, is manifestly
6 not a “consumer” seeking services. Yet, after referring to Utopia as one to whom “ConnectPR
7 has actually offered and provided its services...,” Myers goes on to conclude “there exists a very
8 real risk that *consumers* may encounter, and be confused by, DigitalMojo’s CONNECT mark
9 since ConnectPR is already targeting some of the same *consumers* specified in DigitalMojo’s
10 application” (Myers Aff. ¶34, emphasis added).

11 Christensen (rightly) avoids the word “consumers,” in favor of the word “customers.”
12 Christensen Aff. ¶34. However, Christensen also refers to ConnectPR’s client “Utopia,” in his
13 Exhibit D, and describes this reference as “a client proposal for marketing and public relations
14 services from Opposer to the Utopia fiber-optic Internet service provider.” Christensen then
15 compares DigitalMojo’s comparative marketing services, which services are inherently consumer
16 services, and which DigitalMojo has specifically identified as directed to “home owners and
17 renters.” That is, Christensen opines, based on only a portion of the wording of DigitalMojo’s
18 identification, that DigitalMojo provides its “customers” with “business marketing services” (like
19 ConnectPR), even though DigitalMojo will present its mark CONNECT to consumers to identify
20 the source of, for instance, “utility hookups.” This particular wording, and like wording in
21 DigitalMojo’s identification, Christensen ignores. In any event, the Board is responsible for the
22 factual findings under the relevant du Pont factors and the ultimate determination of likelihood of
23 confusion, and it will not substitute the opinion of a witness, even an expert witness, for its
24 evaluation of the facts. *Edwards Lifesciences Corp. v. VigiLanz Corp.*, 94 USPQ2d 1399, 1402
25 (TTAB 2010).

26 DigitalMojo asserts that the opinions of Myers and Christensen comprise “analysis” of
27 words selected from the identifications of services found in the CPR Registrations, and in this
28 application, and not based on the entire identifications of either ConnectPR or DigitalMojo.

1 Manifestly, “companies providing telecommunications services” (ConnectPR’s clients) are not
2 “home owners” (DigitalMojo’s consumer), and such services are therefore not related. These
3 flawed “analysis” leave open questions like: “To whom are ConnectPR and DigitalMojo
4 addressing their services, and how do ConnectPR and DigitalMojo reach their respective
5 markets?” As a result, we cannot use the statements of Myers and Christensen to determine
6 whether DigitalMojo’s services as identified are a specific “subset, subtype, form or subcategory”
7 and even within the “penumbra” (in the words of Christensen and Myers) of ConnectPR’s
8 services as identified.

9 ConnectPR compounds its mistaken conclusions its “analysis” as it compares its class 16
10 goods with DigitalMojo’s class 35 services, its class 38 services with DigitalMojo’s class 38
11 services, its class 38 services with DigitalMojo’s class 42 services, its class 38 services with
12 DigitalMojo’s class 45 services, and its class 9 services with DigitalMojo’s class 9 services. In
13 most of these cases, ConnectPR pulls a portion of the text from its identification of goods and
14 services, and pulls a portion of text from DigitalMojo’s identification of services, compares these
15 “snippets” as if they accurately described the goods and services of each company, and then
16 (erroneously) concludes the services of these companies are “related.” In many of these cases,
17 Myers and Christensen “analyze” for us the relationship between ConnectPR’s goods and
18 services and DigitalMojo’s services with words such as “it is hard to imagine” (a company which
19 offers ConnectPR’s services that does not include DigitalMojo’s services). Myers Aff. ¶42.
20 Meanwhile, ConnectPR ignores the distinctiveness of the word “connect,” and the sophistication
21 of those who perceive these marks. We understand why, for ConnectPR, it is “hard to imagine.”
22 In each case, ConnectPR ignores the very real distinction between the “consumers” DigitalMojo
23 wishes to serve, on the one hand, and ConnectPR’s business clients, on the other hand.

24
25 *D. There is a Genuine Dispute that the Goods/Services of the CPR Marks and the*
26 *Opposed Mark Travel Through the Same Channels of Trade and Have the Same*
Class of Customer.

27 ConnectPR continues its misreading as it continues with the “analysis” of channels of
28 trade. Here ConnectPR assumes an identification as it states “...Connect’s respective goods and

1 services are presumed to travel in all normal and usual channels of trade, and to all classes of
2 customers,” rather than reciting text from DigitalMojo’s identification, and text from
3 ConnectPR’s identifications. With its assumption, ConnectPR cannot even compare “snippets”
4 from the identifications of each company. ConnectPR again (erroneously) concludes “there is no
5 genuine dispute” (that the channels of trade are the same, or that they overlap, it is not quite clear
6 what ConnectPR is asserting here). To make its point, ConnectPR states it “has actually offered
7 services to companies providing telecommunication services as recited in Class 35 of the
8 Opposed Application.” The operative (but again ignored) words of “the Opposed Application”
9 here are: “...marketing a variety of services to home owners and renters, namely, utility hook-ups,
10 telecommunication services...” Note here that ConnectPR’s statement that it is “targeting some
11 of the same consumers specifically identified in Class 35 of the Opposed Application” directly
12 contradicts ConnectPR’s statement that it “offered services to companies providing
13 telecommunications services”: companies providing telecommunications services are not
14 “consumers” (such as the “home owners and renters” DigitalMojo is targeting with its identified
15 services). Again, ConnectPR ignores the very real distinction between the “consumers”
16 DigitalMojo wishes to serve, on the one hand, and ConnectPR’s business clients, on the other
17 hand. ConnectPR’s attempt to discuss “channels of trade” does not meet the requirements of the
18 test ConnectPR says applies in this case.

19 With its assertion that “the Goods/Services of the CPR Marks and the Opposed Mark
20 Travel Through the Same Channels of Trade and Have the Same Class of Customer,” ConnectPR
21 comes to the heart of the question of likelihood of confusion in DigitalMojo’s view. ConnectPR
22 asserts the Channels and Customers are the same; DigitalMojo asserts the Channels and
23 Customers are different. ConnectPR relies entirely on the identifications of services contained in
24 its registrations.

25 The Board cannot make any determination on relatedness based on ConnectPR’s cited
26 registrations, without also determining what the identifications of services of those registrations
27 mean as written. However, ConnectPR has not in its Motion, and not in its settlement
28 communications, ever considered the scope of its registrations except as ConnectPR has argued

1 them in its Motion here. ConnectPR affidavits show it has actually provided the services of
2 *assisting* ConnectPR's *clients* to promote the *client's* goods and services over the Internet under
3 the *client's* marks, and nothing in those affidavits show ConnectPR has used *ConnectPR's marks*
4 alongside its client's marks. While this distinction appears to be lost on ConnectPR, the
5 difference in identifications clearly and directly points to different markets and channels of trade,
6 as DigitalMojo's services will be supplied to, and directed to, consumers, on the one hand, and
7 ConnectPR supplies its services to its business clients, which then supply services and goods to
8 consumers under *their* marks, on the other hand. DigitalMojo asserts ConnectPR cannot
9 factually establish its "channels of trade," or its "class of customer,"³ unless ConnectPR
10 considers the specific markets it and DigitalMojo serve, and from that whether businesses or
11 consumers (or both) are presented with ConnectPR's and DigitalMojo's marks.

13 VI. CONCLUSION

14 DigitalMojo submits that when all of the foregoing is considered, this Board will find
15 there are genuine issues of material fact sufficient to deny summary judgment on the issue of
16 likelihood of confusion. The Opposed Mark and the CPR Marks are similar but, without
17 evidence on the distinctiveness of the word "connect," or the sophistication of prospective
18 purchasers, the Board can come to no reasonable conclusion on whether these marks are
19 sufficiently similar to cause likelihood of confusion. Further, without such evidence on the
20 distinctiveness of the word "connect," and based on a selective reading of only some of the
21 services identified in DigitalMojo's application and some of the services identified in
22 ConnectPR's registration, the Board can come to no reasonable conclusion on whether such
23 services are related. Finally, because DigitalMojo questions both ConnectPR's interpretation of
24 the services it identifies in its registrations, and questions the markets served by, and channels of

26
27 ³ Recall ConnectPR asserts in its Motion that likelihood of confusion may be found when the respective services
28 of the parties are related in some manner, and/or that the conditions and activities surrounding the marketing of the
services are such that they would or could be encountered by the same persons under circumstances that could, because
of the similarity of the mark, give rise to the mistaken belief that they originate from the same source.

1 trade utilized by, ConnectPR, DigitalMojo has petitioned to cancel two of ConnectPR's
2 registrations, and ConnectPR's registration of its mark CONNECTPR (for class 35 services)
3 should now be cancelled.

4
5 Respectfully submitted,

6
7 

8 Date: October 16, 2014

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1 **CERTIFICATE OF ELECTRONIC FILING**

2 I hereby certify that this document is today being submitted via electronic filing utilizing
3 the ESTTA system on:

4
5 Date: October 16, 2014



6 Thomas W. Cook

7
8 **CERTIFICATE OF SERVICE BY U.S. MAIL, 37 C.F.R. §2.119(a)**

9 I hereby declare:

10 I am over the age of 18 years, and am not a party to the within cause. I am employed in
11 Sausalito, California.

12 My business address is 3030 Bridgeway, Suite 425-430, Sausalito, California. My
13 mailing address is P.O. Box 1989, Sausalito, California.

14 On the date first written below, I served a true copy of the attached document entitled:


15 **APPLICANT'S RESPONSE TO OPPOSER'S**

16 **MOTION FOR SUMMARY JUDGMENT**

17 by placing it in a sealed envelope and depositing it in the United States mail, first class postage
18 fully prepaid, addressed to the following:

19 Clayton, Howarth & Cannon, P.C.
20 P. O. Box 1909
21 Sandy UT 84091-1909
22 Attention: Karl R. Cannon

23 I declare under penalty of perjury that the foregoing is true and correct. Executed at
24 Sausalito, California on October 16, 2014.



26 Thomas Cook

EXHIBIT 1
DECLARATION OF MARTIN SMITH

1 **IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**
2 **BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

3 In the Matter of Trademark Application Serial No. 77/714,693

4 Mark: CONNECT

5
6 CONNECT PUBLIC RELATIONS, INC., a
7 Utah corporation.

8 Opposer,

9 v.

10 DIGITALMOJO, INC., a California corporation

11 Applicant.

Opposition No. 91196299

12
13 **DECLARATION OF MARTIN SMITH IN SUPPORT OF APPLICANT'S**
14 **RESPONSE TO OPPOSER'S MOTION FOR SUMMARY JUDGMENT**
15

16 I, Martin Smith, make this affidavit and hereby on oath state, based upon my personal
17 knowledge, that:

18
19 1. I am the founder and Chief Executive Officer of Applicant DIGITALMOJO, INC.
20 ("DigitalMojo").

21
22 2. Early in 2009, DigitalMojo decided it could use the mark CONNECT to provide a wide
23 variety of services under the mark CONNECT, and DigitalMojo determined it would provide
24 such services.

25
26 3. On April 15, 2009, DigitalMojo filed an application for registration of the mark
27 CONNECT with the U.S. Patent and Trademark Office based on its intent to use this mark, and
28 that application received the serial number 77714693.

1 4. Since filing its application for CONNECT, DigitalMojo has developed its plans to
2 provide services as it originally determined it would, and as those services are set forth in
3 application serial number 77714693 (the "Services"), and DigitalMojo has continued to take
4 steps toward implementing such plans.

5
6 5. In my experience, the term "marketing" covers a variety of services, most of which are
7 not related to one another. Services such as "buying air time for high-tech companies" and
8 "handing out direct mail flyers for a garage sale" for instance, are both "marketing" in a broad
9 sense, however such services are manifestly directed to different groups of potential "customers,"
10 and such services are therefore not "related" in my view.

11
12 6. DigitalMojo is a "marketing" company which markets the services of others to
13 consumers, that is, DigitalMojo markets to those who are the ultimate users of the goods and
14 services of business entities which supply goods and services to individual persons. These are
15 "Consumer Marketing Services."

16
17 7. DigitalMojo's intent from early in 2009, and up to the date of this declaration, was and is
18 to provide the Services to consumers under the mark CONNECT. DigitalMojo therefore intends
19 to provide only Consumer Marketing Services, and the Services in application serial number
20 77714693 are all Consumer Marketing Services.

21
22 8. DigitalMojo's intent, since it wishes to provide Consumer Marketing Services, is to put
23 its mark CONNECT directly in front of consumers, as it must if it is to provide Consumer
24 Marketing Services, so that consumers will purchase the Services from DigitalMojo, under its
25 mark CONNECT, or use the Services supplied under the mark CONNECT to find companies
26 which will sell goods and services consumers want or need.

1 9. DigitalMojo is not a “marketing” company which markets its services to companies so
2 that those companies can then better market their goods and services to others. Such “Business
3 Marketing Services” are supplied by “Business Marketing Companies” which find business
4 “clients,” which clients wish to present their names and trademarks to others. In my experience,
5 a Business Marketing Companies which supplies Business Marketing Services never put their
6 names or marks directly in front of consumers, so that consumers will see the name and marks of
7 the Business Marketing Companies in the advertising of its “client” company, right alongside the
8 name and marks of its “client” company.

10 10. Since Consumer Marketing Services are directed to consumers, and Business Marketing
11 Services are directed to businesses, and Business Marketing Companies do not present their
12 names and marks within the advertising of their clients, there is in my experience no group of
13 potential purchasers who are exposed to the names and marks of companies which provide
14 Consumer Marketing Services and also exposed to the names and marks of Business Marketing
15 Services. Consumer Marketing Services and Business Marketing Services are therefore not
16 related “marketing” services.

18 11. I have reviewed Exhibit C attached to the Affidavit of Neil Myers, President of Connect
19 Public Relations, Inc., opposer in this opposition action (“ConnectPR”). That Exhibit C,
20 according to Myers, is “...a proposal for a potential client in the telecommunications industry...”
21 (the “Utopia Proposal”). I believe the Utopia Proposal to be a proposal by ConnectPR to the
22 potential client identified therein to provide Business Marketing Services, and I view the Utopia
23 proposal to be typical of proposals by Business Marketing Companies to provide their Business
24 Marketing Services.

26 12. DigitalMojo would never provide a proposal to a client such as the Utopia Proposal,
27 because DigitalMojo provides only Consumer Marketing Services, and not Business Marketing
28 Services. The services offered in the Utopia Proposal are therefore not “related” to the

1 Consumer Marketing Services of DigitalMojo, and DigitalMojo would never “target” the client
2 to which the Utopia Proposal was directed (or any other entity which needs such Business
3 Marketing Services).

4
5 13. I have reviewed the other exhibits attached to the Affidavit of Neil Myers, and they are
6 consistent in that they show the offer or provision of Business Marketing Services to the clients
7 of ConnectPR, and they never show any offer or provision of Consumer Marketing Services to
8 consumers.

9
10 14. In my experience, business which can use Business Marketing Services supplied by
11 Business Marketing Companies, such as ConnectPR supplies to its clients, are “sophisticated,” in
12 the sense that they know they are paying large sums of money for those Business Marketing
13 Services. In my experience, such clients will not be confused by the use of even identical marks
14 into purchasing consumer goods and services, because such clients will immediately know they
15 are purchasing Business Marketing Services and not consumer goods and services.

16
17 15. Since ConnectPR is a Business Marketing Companies (primarily a “PR” company), none
18 of the goods or services it says it provides will, in my view, be the kinds of services DigitalMojo
19 provides to consumers as it provides its Consumer Marketing Services (and will provide as it
20 provides its Consumer Marketing Services to consumers under the mark CONNECT), nor are
21 any of the goods and services ConnectPR says it provides “related” to DigitalMojo’s Consumer
22 Marketing Services.

23 Respectfully submitted,

24
25
26 Date: October 15, 2014

27 
28 Martin Smith

1
2 **CERTIFICATE OF ELECTRONIC FILING**

3 I hereby certify that this document is today being submitted via electronic filing utilizing
4 the ESTTA system on:

5 Date: October 16, 2014



6 Thomas W. Cook
7
8

9 **CERTIFICATE OF SERVICE BY U.S. MAIL, 37 C.F.R. §2.119(a)**

10 I hereby declare:

11 I am over the age of 18 years, and am not a party to the within cause. I am employed in
12 Sausalito, California.

13 My business address is 3030 Bridgeway, Suite 425-430, Sausalito, California. My
14 mailing address is P.O. Box 1989, Sausalito, California.

15 On the date first written below, I served a true copy of the attached document entitled:

16 **DECLARATION OF MARTIN SMITH IN SUPPORT OF APPLICANT'S**

17 **RESPONSE TO OPPOSER'S MOTION FOR SUMMARY JUDGMENT**

18 by placing it in a sealed envelope and depositing it in the United States mail, first class postage
19 fully prepaid, addressed to the following:

20 Clayton, Howarth & Cannon, P.C.
21 P. O. Box 1909
22 Sandy UT 84091-1909
Attention: Karl R. Cannon

23 I declare under penalty of perjury that the foregoing is true and correct. Executed at
24 Sausalito, California on October 16, 2014.



26 Thomas Cook
27
28

EXHIBIT 2
DECLARATION OF THOMAS COOK

1 **IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**
2 **BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

3 In the Matter of Trademark Application Serial No. 77/714,693

4 Mark: CONNECT

5 _____
6 CONNECT PUBLIC RELATIONS, INC., a
7 Utah corporation.

8 Opposer,

9 v.

10 DIGITALMOJO, INC., a California corporation

11 Applicant.
12 _____

Opposition No. 91196299

13
14 **DECLARATION OF THOMAS COOK IN SUPPORT OF APPLICANT’S**
15 **RESPONSE TO OPPOSER’S MOTION FOR SUMMARY JUDGMENT**

16 I, Thomas W. Cook, Esq., make this declaration and hereby on oath state, based upon my
17 personal knowledge and my experience, that:

18
19 1. I am the attorney of record for Applicant DIGITALMOJO, INC. (“DigitalMojo”). I
20 have personal knowledge of the facts herein stated.

21
22 2. I submit this declaration in support of DigitalMojo’s Response to the Motion
23 for Summary Judgment filed April 25, 2014 (the “Motion”) by Opposer CONNECT PUBLIC
24 RELATION, INC.’s (“ConnectPR”) in its opposition to registration of the mark CONNECT (the
25 “Mark,” application number 77/714,693). I have been practicing primarily trademark law for in
26 excess of 25 years, in the process prosecuting over 1,100 trademark applications. I am therefore
27 familiar with the factors which one must consider when deciding whether two marks are
28 “confusingly similar.”

1 3. Based on discovery responses produced in this opposition, on behalf of DigitalMojo, I
2 filed Petitions to Cancel the ConnectPR Registrations on August 22, 2011. DigitalMojo's
3 Petitions to Cancel the ConnectPR Registrations have been allocated action numbers 92054427,
4 for CONNECT PUBLIC RELATIONS, and 92054395, for CONNECTPR (collectively, the
5 "Cancellation Actions"). Among the bases for the Cancellation Actions, DigitalMojo has alleged
6 ConnectPR:

7
8 a. has abandoned the ConnectPR Marks, in that ConnectPR failed to continue its use
9 of, or ceased its use of, the ConnectPR Marks for some of the services identified
10 in the ConnectPR Registrations, or ConnectPR failed to continue its use of, or
11 ceased its use of, the ConnectPR Marks for some part of the services identified in
12 the ConnectPR Registrations.

13
14 c. has abandoned the ConnectPR Marks, in that ConnectPR intends not to use the
15 ConnectPR Marks in the future in connection with some of, or some part of, the
16 services identified in ConnectPR's Registrations.

17
18 4. On August 28, 2011, DigitalMojo, in this opposition action, filed its Motion to
19 Consolidate its Petitions to Cancel the ConnectPR Registrations and this opposition action. The
20 Petitions to Cancel the ConnectPR Registrations were consolidated with this opposition to
21 registration DigitalMojo's mark CONNECT on February 23, 2012.

22
23 5. I conducted a search of the United States Patent and Trademark Office's (the "USPTO's")
24 web site at the time DigitalMojo's application was being examined, and I then identified over 24
25 active registrations on the Principal Register consisting of the identical term CONNECT. I list
26 these registrations below, and attach hereto as Exhibit A copies of these third-party registrations:

1	MARK	REG. NO.	GOODS/SERVICES
2	CONNECT	3378869	Water refrigerators and water fountains
3	CONNECT	3242619	Metal lattices, runners, hangers, profiles, namely, building
4			wall and ceiling framing primarily of metal, grid system
5			supports of metal for ceilings and walls, trims for building
6	CONNECTS	3352403	purposes, metal splices for joining walls, ceilings and grid
7			systems, clips of metal for suspended ceilings and walls
8	CONNECT	3209085	Computer software that enables various user applications to
9			communicate with one or more hardware devices
10	CONNECT	3111692	Cigarettes
11			Educational Services, Namely, Arranging and Conducting
12	CONNECT	3137854	Conferences and Seminars for Electric Utility Cooperatives
13			in the Fields of Marketing, Communications, and Member
14			Services
15	CONNECT	2996013	Air passenger and baggage transfer services; ground
16			transfer of air passengers; passenger ground transportation
17	CONNECT	3046870	services
18			Magazines and catalogs in the field of computers,
19	CONNECT	2869782	technology, and information systems
20			Educational services, namely conducting classes, seminars,
21	CONNECT	3390861	workshops, and conferences for investment advisors in the
22			fields of investment advisor practice management
23	CONNECT	3537420	Computer programs for use in optimization, pattern
24			recognition, scheduling, and artificial intelligence
25	CONNECT	3214171	Body and beauty care preparations; Body lotions; Hair care
26			preparations; Hair styling preparations; Make-up;
27			Non-medicated bath preparations
28	CONNECT		Entertainment services, namely, providing pre-recorded
			music on-line via a global computer network
	CONNECT		Computer-based services, namely computer programming,
			developing, implementing, and providing a
			non-downloadable web-based application program for
			others for generating reports, creating individually-tailored
			student interest forms and event response forms, importing
			student prospect data from student information systems,
			testing services, and other sources, scheduling and tracking
			targeted mailings and e-mail campaigns, conducting
			surveys that measure communication effectiveness, and
			generating reports and frequency tabulations from the
			survey data; Computer-based services, namely computer
			programming, developing, implementing, and providing a
			non-downloadable web-based application program for
			others for providing information and advice to students and

1			their parents regarding the college admissions process
2	CONNECT	3133515	Providing on-line medical oncology information for use by
3			patients to enhance cancer treatment decisions
4	CONNECT	2892719	Trade publications, namely, periodic magazines for salon
5			management professionals
6	CONNECT	2836079	Allograph implants comprising formerly living tissue for
7			use in spinal surgery
8	CONNECT	2824529	Educational services, namely, conducting classes, seminars,
9			conferences, workshops for high-technology entrepreneurs
10			in the fields of telecommunications, biotechnology,
11			software, electronics, the Internet, financing and start-up
12			funding, employee recruitment, human resources, executive
13			education, partnering and networking
14	CONNECT	2675834	Wireless two way radios
15	CONNECT	2580587	Educational services, namely, conducting seminars and
16			providing training for entrepreneurs in the fields of high
17			technology research and development, telecommunications,
18			biotechnology, software, electronics, the Internet, financing
19			and start-up funding, employee recruitment, human
20			resources, executive education, industry updates, partnering
21			and networking
22	CONNECT	2302904	Educational services, namely, conducting classes,
23			conferences, workshops and seminars in the field of
24			telephone customer service techniques
25	CONNECT	2206279	Custom configured computer programs for enabling
26			systems operating under different protocols and operating
27			programs to interoperate and interface with each other
28	CONNECT	1910546	Psychiatric and chemical dependency assessments
	CONNECT	1718078	Religious educational material for classroom use
	CONNECT	1679642	Education loan services and loan consolidation services

6. In addition, a search of the USPTO's web site reveals 505 records of applications and registrations for marks which contain the word CONNECT and identify some kind of "marketing services." I attach as Exhibit B hereto a printout of the USPTO TESS records showing such a count, and "representative" copies of 12 of these third-party registrations.

1 7. I conclude from the large number of references secured in the above search results that
2 the word “connect” is not distinctive for many services, and “connect” is descriptive of many
3 services. As a result, those who use the services of companies with names or marks which
4 include the word “connect” generally cannot simply rely on the presence of the word “connect”
5 within a name or mark to identify any single supplier of goods or services.
6

7 8. I know the distinctiveness of the words used in trademarks is a factor one must consider
8 when considering the weight one must accord to a word when comparing two marks to determine
9 whether those two marks are confusingly similar. With such consideration, one can conclude the
10 marks of different trademark owners may be quite similar in sight, sound, and meaning without
11 causing confusion, and the goods and services of supplied under such marks may be quite similar
12 without being “related.” Without such consideration of this factor, if relevant, one can come to
13 no reasonable conclusions about confusing similarity.
14

15 9. In my experience, business which can use Business Marketing Services supplied by
16 Business Marketing Companies, such as ConnectPR appears to supply to its clients, are
17 “sophisticated,” in the sense that they know they are paying large sums of money for those
18 Business Marketing Services.
19

20 10. I know the degree of sophistication of the potential purchasers of goods and services is a
21 factor one must consider when considering the weight one must accord to a word when
22 comparing two marks to determine whether those two marks are confusingly similar. With such
23 consideration, one can conclude the marks of different trademark owners may be quite similar in
24 sight, sound, and meaning without causing confusion, because sophisticated purchasers will
25 know they are purchasing Business Marketing Services and not consumer goods and services.
26 Without such consideration of this factor, if relevant, one can come to no reasonable conclusions
27 about confusing similarity.
28

1 11. In my opinion, the Board can come to no reasonable conclusion about confusing
2 similarity without considering both the distinctiveness of the words used in the marks compared,
3 and also the sophistication of those who will purchase the goods or services offered under such
4 marks. It is my view that any analysis of confusing similarity which does not consider both of
5 these factors, if relevant, is incomplete and faulty.

6
7 12. I have reviewed Exhibit C attached to Exhibit 1 of ConnectPR's Motion for Summary
8 Judgement. This Exhibit 1 is the Affidavit of Neil Myers, President of Connect Public Relations,
9 Inc., opposer in this opposition action ("ConnectPR"). That Exhibit C, according to Myers, is
10 "...a proposal for a potential client in the telecommunications industry..." (the "Utopia
11 Proposal"). I view the Utopia Proposal to be a proposal by ConnectPR to the potential client
12 identified therein to provide Business Marketing Services, and I view the Utopia proposal to be
13 typical of proposals by Business Marketing Companies to provide their Business Marketing
14 Services. In Exhibit C, ConnectPR apparently is marketing its services to companies (its
15 "client") so that those clients can then better market their goods and services to others. Such
16 "Business Marketing Services" are supplied by "Business Marketing Companies" which find
17 business "clients," which clients wish to present their names and trademarks to others. I have
18 reviewed the other exhibits attached to the Affidavit of Neil Myers, and they are consistent in
19 that they show the offer or provision of Business Marketing Services to the clients of ConnectPR;
20 they never show any offer or provision of services to consumers that I can identify as such.

21
22 13. I have come to the following conclusion: While ConnectPR asserts it "has actually
23 offered and provided the services of promoting the goods and services of others over the
24 Internet," the Affidavit of Neil Myers shows ConnectPR has actually provided the services of
25 *assisting* ConnectPR's *clients* to promote the *client's* goods and services over the Internet under
26 the *client's* marks. Nothing there shows ConnectPR has presented *ConnectPR's marks* to its
27 client's customers as it promotes the goods and services of others." Accordingly, no prospective
28 purchaser of ConnectPR's client's services is exposed to ConnectPR's marks.

1 14. I have also reviewed Exhibit 2 of ConnectPR's Motion for Summary Judgement. This
2 Exhibit 2 is the Affidavit of Dr. Glenn L Christensen, a consultant or "expert" hired by
3 ConnectPR in this opposition action. In reviewing this Exhibit 2, I conclude that Christensen has
4 not considered either the distinctiveness of the words used in the marks he compared, or the
5 sophistication of those who will purchase the goods or services offered under such marks. It is
6 my view that Christensen's analysis of confusing similarity, which does not include either of
7 these factors is incomplete and faulty, and the the Board can come to no reasonable conclusion
8 about confusing similarity based on the Affidavit of Dr. Glenn L Christensen.

9
10 15. I have also reviewed all the Exhibits attached to the Affidavits of Myers and Christensen,
11 and I find there no evidence of current use of the mark CONNECTPR, despite the character of
12 many of such Exhibits as notifications to the world of the new brands of ConnectPR. The clear
13 implication in the absence of evidence in such circumstances is that ConnectPR has in fact
14 abandoned the mark CONNECTPR.

15
16 16. In my review of all the Exhibits attached to the Affidavits of Myers and Christensen, I
17 also find there no unambiguous evidence of use of the mark CONNECT by ConnectPR. I have
18 found instead:

19
20 i. Non-trademark use by ConnectPR, such as the mention of the word
21 "connect" in the question "Why Connect?," and such as references to ConnectPR the company.
22 Myers Aff. ¶23, and its Exhibit A, at CPR 002178 and CPR 002178 and CPR 002187.

23
24 ii. What appears to be an admission by ConnectPR, that it is using only
25 CONNECT MARKETING and the "four parts of our new brand," as ConnectPR informs the
26 world of its business using a "graphic representing the new hierarchy of Connect's marks under
27 CONNECT MARKETING." Myers Aff., ¶54, with graphic. Notably, Myers does not say the
28 mark CONNECT is part of "the new hierarchy," despite the fact that this graphic has been

1 presented to the public to explain ConnectPR's future brand usage. In my opinion, Myers'
2 statement that ConnectPR is using CONNECT PUBLIC RELATIONS in this same graphic is an
3 admission that the presentation of these three words together, regardless of the differences in size
4 between "connect" and "public relations," is a use of CONNECT PUBLIC RELATION, and not
5 a use of CONNECT.

6
7
8
9 Respectfully submitted,

10
11 

12 Date: October 16, 2014

13 Thomas W. Cook, Reg. No. 38,849
14 Attorney for Applicant
15 3030 Bridgeway, Suite 425-430
16 Sausalito, California 94965
17 Telephone: 415-339-8550
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Date: October 16, 2014

Thomas W. Cook

Thomas W. Cook

CERTIFICATE OF SERVICE BY U.S. MAIL, 37 C.F.R. §2.119(a)

I hereby declare:

Sausalito, California.

My business address is 3030 Bridgeway, Suite 425-430, Sausalito, California. My mailing address is P.O. Box 1989, Sausalito, California.

On the date first written below, I served a true copy of the attached document entitled:

**DECLARATION OF THOMAS COOK IN SUPPORT OF APPLICANT’S
RESPONSE TO OPPOSER’S MOTION FOR SUMMARY JUDGMENT**

by placing it in a sealed envelope and depositing it in the United States mail, first class postage fully prepaid, addressed to the following:

Clayton, Howarth & Cannon, P.C.
P. O. Box 1909
Sandy UT 84091-1909
Attention: Karl R. Cannon

I declare under penalty of perjury that the foregoing is true and correct. Executed at
Sausalito, California on October 16, 2014

Thomas W. Cook

Thomas Cook

EXHIBIT A
to
DECLARATION OF THOMAS COOK IN SUPPORT OF APPLICANT'S
RESPONSE TO OPPOSER'S MOTION FOR SUMMARY JUDGMENT

Int. Cl.: 36

Prior U.S. Cl.: 102

United States Patent and Trademark Office **Reg. No. 1,679,642**
Registered Mar. 17, 1992

**SERVICE MARK
PRINCIPAL REGISTER**

CONNECT

**NEW ENGLAND EDUCATION LOAN MAR-
KETING CORPORATION, THE (MASSACHU-
SETTS CORPORATION)
50 BRAINTREE HILL PARK, SUITE 300
BRAINTREE, MA 021841763**

**FIRST USE 8-15-1990; IN COMMERCE
8-15-1990.**

SER. NO. 74-145,149, FILED 3-6-1991.

**FOR: EDUCATION LOAN SERVICES AND
LOAN CONSOLIDATION SERVICES, IN
CLASS 36 (U.S. CL. 102).**

JENNIFER BRUST, EXAMINING ATTORNEY

Int. Cl.: 16

Prior U.S. Cl.: 38

United States Patent and Trademark Office

Reg. No. 1,718,078

Registered Sep. 22, 1992

**TRADEMARK
PRINCIPAL REGISTER**



SILVER BURDETT GINN (DELAWARE CORPORATION)
250 JAMES STREET
MORRISTOWN, NJ 07960

THE STIPPLING IS FOR SHADING PURPOSES ONLY AND DOES NOT INDICATE COLOR.

FOR: RELIGIOUS EDUCATIONAL MATERIAL FOR CLASSROOM USE, IN CLASS 16 (U.S. CL. 38).

FIRST USE 11-4-1991; IN COMMERCE 11-4-1991.

SER. NO. 74-231,696, FILED 12-19-1991.

CHRISTOPHER KELLY, EXAMINING ATTORNEY

Int. Cl.: 42

Prior U.S. Cl.: 100

United States Patent and Trademark Office

Reg. No. 1,910,546

Registered Aug. 8, 1995

**SERVICE MARK
PRINCIPAL REGISTER**

CONNECT

CARILION ENTERPRISES, INC. (VIRGINIA
CORPORATION)
1212 THIRD STREET, SW
ROANOKE, VA 24016

FIRST USE 9-1-1992; IN COMMERCE
10-20-1992.

SER. NO. 74-374,103, FILED 4-1-1993.

FOR: PSYCHIATRIC AND CHEMICAL DE-
PENDENCY ASSESSMENTS AND REFER-
RALS, IN CLASS 42 (U.S. CL. 100).

MARK T. MULLEN, EXAMINING ATTORNEY

Int. Cl.: 9

Prior U.S. Cls.: 21, 23, 26, 36 and 38

Reg. No. 2,206,279

United States Patent and Trademark Office

Registered Dec. 1, 1998

**TRADEMARK
PRINCIPAL REGISTER**



**CONNECT, INC. (ILLINOIS CORPORATION)
4415 WEST HARRISON STREET, SUITE 102
HILLSDALE, IL 60162**

**FOR: CUSTOM CONFIGURED COMPUTER
PROGRAMS FOR ENABLING SYSTEMS OPER-
ATING UNDER DIFFERENT PROTOCOLS
AND OPERATING PROGRAMS TO INTERO-
PERATE AND INTERFACE WITH EACH**

**OTHER , IN CLASS 9 (U.S. CLS. 21, 23, 26, 36
AND 38).**

**FIRST USE 3-15-1992; IN COMMERCE
3-15-1992.**

SER. NO. 74-402,145, FILED 6-15-1993.

**DAVID NICHOLSON, EXAMINING ATTOR-
NEY**

Int. Cl.: 41

Prior U.S. Cls.: 100, 101, and 107

Reg. No. 2,302,904

United States Patent and Trademark Office

Registered Dec. 21, 1999

**SERVICE MARK
PRINCIPAL REGISTER**

CONNECT

COMTUTOR, INC. (ILLINOIS CORPORATION)
16 SOUTHPOINT LANE
IPSWICH, MA 01938

FOR: EDUCATIONAL SERVICES, NAMELY,
CONDUCTING CLASSES, CONFERENCES,
WORKSHOPS AND SEMINARS IN THE FIELD
OF TELEPHONE CUSTOMER SERVICE TECH-

NIQUES, IN CLASS 41 (U.S. CLS. 100, 101 AND
107).

FIRST USE 6-3-1998; IN COMMERCE
6-3-1998.

SN 75-499,660, FILED 6-10-1998.

MARC LEIPZIG, EXAMINING ATTORNEY

Int. Cl.: 41

Prior U.S. Cls.: 100, 101 and 107

United States Patent and Trademark Office

Reg. No. 2,580,587

Registered June 18, 2002

**SERVICE MARK
PRINCIPAL REGISTER**

CONNECT

REGENTS OF THE UNIVERSITY OF CALIFORNIA, THE (CALIFORNIA CORPORATION)
1111 FRANKLIN STREET
8TH FLOOR
OAKLAND, CA 946079800

THE INTERNET, FINANCING AND START-UP FUNDING, EMPLOYEE RECRUITMENT, HUMAN RESOURCES, EXECUTIVE EDUCATION, INDUSTRY UPDATES, PARTNERING AND NETWORKING, IN CLASS 41 (U.S. CLS. 100, 101 AND 107).

FOR: EDUCATIONAL SERVICES, NAMELY, CONDUCTING SEMINARS AND PROVIDING TRAINING FOR ENTREPRENEURS IN THE FIELDS OF HIGH TECHNOLOGY RESEARCH AND DEVELOPMENT, TELECOMMUNICATIONS, BIOTECHNOLOGY, SOFTWARE, ELECTRONICS,

FIRST USE 5-26-1986; IN COMMERCE 5-26-1986.

SER. NO. 75-606,239, FILED 12-15-1998.

BRETT J. GOLDEN, EXAMINING ATTORNEY

Int. Cl.: 9

Prior U.S. Cls.: 21, 23, 26, 36 and 38

United States Patent and Trademark Office

Reg. No. 2,675,834

Registered Jan. 21, 2003

**TRADEMARK
PRINCIPAL REGISTER**

CONNECT

CLEARLINK COMMUNICATIONS, LLC (NEW
HAMPSHIRE LIMITED LIABILITY COMPA-
NY)
34 FRANKLIN STREET
#5703
NASHUA, NH 03060

FIRST USE 2-10-1999; IN COMMERCE 4-1-1999.

SER. NO. 75-679,719, FILED 4-9-1999.

FOR: WIRELESS TWO WAY RADIOS, IN CLASS 9
(U.S. CLS. 21, 23, 26, 36 AND 38).

HOWARD SMIGA, EXAMINING ATTORNEY

Int. Cl.: 41

Prior U.S. Cls.: 100, 101 and 107

United States Patent and Trademark Office

Reg. No. 2,824,529

Registered Mar. 23, 2004

**SERVICE MARK
PRINCIPAL REGISTER**

CONNECT

THE REGENTS OF THE UNIVERSITY OF CALIFORNIA (CALIFORNIA CORPORATION)
UNIVERSITY OF CALIFORNIA, SAN DIEGO
9500 GILMAN DRIVE
LA JOLLA, CA 920930176

FOR: EDUCATIONAL SERVICES, NAMELY, CONDUCTING CLASSES, SEMINARS, CONFERENCES, WORKSHOPS FOR HIGH-TECHNOLOGY ENTREPRENEURS IN THE FIELDS OF TELECOMMUNICATIONS, BIOTECHNOLOGY, SOFTWARE, ELECTRONICS, THE INTERNET, FI-

NANCING AND START-UP FUNDING, EMPLOYEE RECRUITMENT, HUMAN RESOURCES, EXECUTIVE EDUCATION, PARTNERING AND NETWORKING, IN CLASS 41 (U.S. CLS. 100, 101 AND 107).

FIRST USE 4-0-2001; IN COMMERCE 4-0-2001.

SER. NO. 76-447,001, FILED 9-4-2002.

ANN LINNEHAN, EXAMINING ATTORNEY

Int. Cls.: 5 and 10

Prior U.S. Cls.: 6, 18, 26, 39, 44, 46, 51 and 52

Reg. No. 2,836,079

United States Patent and Trademark Office

Registered Apr. 27, 2004

**TRADEMARK
PRINCIPAL REGISTER**

CONNECT

CORTEK, INC. (DELAWARE CORPORATION)
980 WASHINGTON STREET
DEDHAM, MA 020266790

FOR: TOOLS FOR SIZING AND IMPLANTING
ALLOGRAPH IMPLANTS FOR USE IN SPINAL
SURGERY, IN CLASS 10 (U.S. CLS. 26, 39 AND 44).

FOR: ALLOGRAPH IMPLANTS COMPRISING
FORMERLY LIVING TISSUE FOR USE IN SPINAL
SURGERY, IN CLASS 5 (U.S. CLS. 6, 18, 44, 46, 51
AND 52).

FIRST USE 9-11-2001; IN COMMERCE 9-11-2001.

SER. NO. 76-476,629, FILED 12-10-2002.

FIRST USE 9-11-2001; IN COMMERCE 9-11-2001.

JEFF DEFORD, EXAMINING ATTORNEY

Int. Cl.: 9

Prior U.S. Cls.: 21, 23, 26, 36 and 38

Reg. No. 2,869,782

United States Patent and Trademark Office

Registered Aug. 3, 2004

**TRADEMARK
PRINCIPAL REGISTER**

CONNECT

NATURAL SELECTION, INC. (CALIFORNIA
CORPORATION)
3333 NORTH TORREY PINES CT., SUITE 200
LA JOLLA, CA 92037

FIRST USE 8-22-2003; IN COMMERCE 8-25-2003.

SER. NO. 78-292,006, FILED 8-25-2003.

FOR: COMPUTER PROGRAMS FOR USE IN
OPTIMIZATION, PATTERN RECOGNITION, SCHE-
DULING, AND ARTIFICIAL INTELLIGENCE, IN
CLASS 9 (U.S. CLS. 21, 23, 26, 36 AND 38).

ANN LINNEHAN, EXAMINING ATTORNEY

Int. Cl.: 16

Prior U.S. Cls.: 2, 5, 22, 23, 29, 37, 38 and 50

Reg. No. 2,892,719

United States Patent and Trademark Office

Registered Oct. 12, 2004

**TRADEMARK
PRINCIPAL REGISTER**

CONNECT

VANCE PUBLISHING (NEW YORK CORPORATION)
400 KNIGHTSBRIDGE PARKWAY
LINCOLNSHIRE, IL 60069

FIRST USE 4-0-2003; IN COMMERCE 4-0-2003.

FOR: TRADE PUBLICATIONS, NAMELY, PERIODIC MAGAZINES FOR SALON MANAGEMENT PROFESSIONALS, IN CLASS 16 (U.S. CLS. 2, 5, 22, 23, 29, 37, 38 AND 50).

SER. NO. 76-510,119, FILED 4-28-2003.

RICHARD WHITE, EXAMINING ATTORNEY

Int. Cl.: 16

Prior U.S. Cls.: 2, 5, 22, 23, 29, 37, 38, and 50

Reg. No. 2,996,013

United States Patent and Trademark Office

Registered Sep. 13, 2005

**TRADEMARK
PRINCIPAL REGISTER**

CONNECT

PC CONNECTION, INC. (DELAWARE CORPORATION)
LEGAL DEPT.
730 MILFORD ROAD
MERRIMACK, NH 03054

FOR: MAGAZINES AND CATALOGS IN THE
FIELD OF COMPUTERS, TECHNOLOGY, AND INFORMATION
SYSTEMS, IN CLASS 16 (U.S. CLS. 2, 5,
22, 23, 29, 37, 38 AND 50).

FIRST USE 4-30-2004; IN COMMERCE 4-30-2004.

THE MARK CONSISTS OF STANDARD CHARACTERS
WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE,
OR COLOR.

SN 78-359,704, FILED 1-29-2004.

HOWARD B. LEVINE, EXAMINING ATTORNEY

Int. Cl.: 41

Prior U.S. Cls.: 100, 101, and 107

United States Patent and Trademark Office

Reg. No. 3,046,870

Registered Jan. 17, 2006

**SERVICE MARK
PRINCIPAL REGISTER**

CONNECT

CHARLES SCHWAB & CO., INC. (CALIFORNIA
CORPORATION)
101 MONTGOMERY STREET
SAN FRANCISCO, CA 94104

FOR: EDUCATIONAL SERVICES, NAMELY
CONDUCTING CLASSES, SEMINARS, WORK-
SHOPS, AND CONFERENCES FOR INVESTMENT
ADVISORS IN THE FIELDS OF INVESTMENT
ADVISOR PRACTICE MANAGEMENT, IN CLASS
41 (U.S. CLS. 100, 101 AND 107).

FIRST USE 4-28-2004; IN COMMERCE 4-28-2004.

THE MARK CONSISTS OF STANDARD CHAR-
ACTERS WITHOUT CLAIM TO ANY PARTICULAR
FONT, STYLE, SIZE, OR COLOR.

SN 78-358,993, FILED 1-28-2004.

SUE LAWRENCE, EXAMINING ATTORNEY

Int. Cl.: 41

Prior U.S. Cls.: 100, 101 and 107

Reg. No. 3,111,692

United States Patent and Trademark Office

Registered July 4, 2006

**SERVICE MARK
PRINCIPAL REGISTER**

CONNECT

NATIONAL RURAL ELECTRIC COOPERATIVE
ASSOCIATION (D.C. INCORPORATED ASSO-
CIATION)

4301 WILSON BLVD.
ARLINGTON, VA 22203

FOR: EDUCATIONAL SERVICES, NAMELY, AR-
RANGING AND CONDUCTING CONFERENCES
AND SEMINARS FOR ELECTRIC UTILITY COOP-
ERATIVES IN THE FIELDS OF MARKETING, COM-
MUNICATIONS, AND MEMBER SERVICES, IN
CLASS 41 (U.S. CLS. 100, 101 AND 107).

FIRST USE 5-15-2005; IN COMMERCE 5-15-2005.

THE MARK CONSISTS OF STANDARD CHAR-
ACTERS WITHOUT CLAIM TO ANY PARTICULAR
FONT, STYLE, SIZE, OR COLOR.

SER. NO. 78-641,258, FILED 6-1-2005.

MELVIN AXILBUND, EXAMINING ATTORNEY

Int. Cl.: 44

Prior U.S. Cls.: 100 and 101

United States Patent and Trademark Office

Reg. No. 3,133,515

Registered Aug. 22, 2006

**SERVICE MARK
PRINCIPAL REGISTER**

CONNECT

FOX CHASE CANCER CENTER (PENNSYLVANIA CORPORATION)
333 COTTMAN AVENUE
PHILADELPHIA, PA 191112497

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

FOR: PROVIDING ON-LINE MEDICAL ONCOLOGY INFORMATION FOR USE BY PATIENTS TO ENHANCE CANCER TREATMENT DECISIONS, IN CLASS 44 (U.S. CLS. 100 AND 101).

SN 76-598,057, FILED 6-15-2004.

FIRST USE 7-14-2004; IN COMMERCE 7-14-2004.

CHRISTOPHER BUONGIORNO, EXAMINING ATTORNEY

Int. Cl.: 39

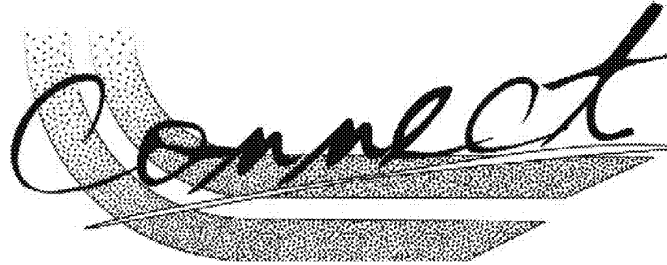
Prior U.S. Cls.: 100 and 105

United States Patent and Trademark Office

Reg. No. 3,137,854

Registered Sep. 5, 2006

SERVICE MARK
PRINCIPAL REGISTER



JOHN MENZIES PLC (SCOTLAND CORPORATION)

108 PRINCESS STREET

EDINBURGH, SCOTLAND EH2 3AA

FOR: AIR PASSENGER AND BAGGAGE TRANSFER SERVICES; GROUND TRANSFER OF AIR PASSENGERS; PASSENGER GROUND TRANSPORTATION SERVICES, IN CLASS 39 (U.S. CLS. 100 AND 105).

PRIORITY CLAIMED UNDER SEC. 44(D) ON ERPN CMNTY TM OFC APPLICATION NO. 3579554, FILED 12-5-2003, REG. NO. 003579554, DATED 4-19-2005, EXPIRES 12-5-2013.

THE STIPPLING SHOWN IN THE DRAWING REPRESENTS SHADING.

SER. NO. 78-401,140, FILED 4-13-2004.

SUSAN STIGLITZ, EXAMINING ATTORNEY

Int. Cl.: 34

Prior U.S. Cls.: 2, 8, 9 and 17

United States Patent and Trademark Office

Reg. No. 3,209,085

Registered Feb. 13, 2007

**TRADEMARK
PRINCIPAL REGISTER**

CONNECT

DHANRAJ IMPORTS, INC. (CALIFORNIA CORPORATION)
11731 STERLING AVENUE STE F
RIVERSIDE, CA 92503

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

FOR: CIGARETTES, IN CLASS 34 (U.S. CLS. 2, 8, 9 AND 17).

SER. NO. 78-871,097, FILED 4-27-2006.

FIRST USE 12-1-2004; IN COMMERCE 6-1-2005.

JOHN GARTNER, EXAMINING ATTORNEY

Int. Cl.: 42

Prior U.S. Cls.: 100 and 101

Reg. No. 3,214,171

United States Patent and Trademark Office

Registered Feb. 27, 2007

**SERVICE MARK
SUPPLEMENTAL REGISTER**

CONNECT

HOBSONS, INC. (DELAWARE CORPORATION)
10200 ALLIANCE ROAD, SUITE 301
CINCINNATI, OH 45242

FOR: HOSTING THE WEB SITES OF OTHERS ON A COMPUTER SERVER FOR A GLOBAL COMPUTER NETWORK, NAMELY FOR COLLEGES AND UNIVERSITIES, AND FOR COLLEGE STUDENTS AND STUDENT PROSPECTS; COMPUTER-BASED SERVICES, NAMELY COMPUTER PROGRAMMING, DEVELOPING, IMPLEMENTING, AND PROVIDING A NON-DOWNLOADABLE WEB-BASED APPLICATION PROGRAM FOR OTHERS FOR AUTOMATING COLLEGE ADMISSIONS OFFICES AND FOR COMMUNICATING WITH PROSPECTIVE STUDENTS OVER A WORLD WIDE NETWORK OF COMPUTERS; COMPUTER-BASED SERVICES, NAMELY COMPUTER PROGRAMMING, DEVELOPING, IMPLEMENTING, AND PROVIDING A NON-DOWNLOADABLE WEB-BASED APPLICATION PROGRAM FOR OTHERS FOR GENERATING REPORTS, CREATING INDIVIDUALLY-TAILORED STUDENT INTEREST FORMS AND EVENT RESPONSE FORMS, IMPORTING STUDENT PROSPECT DATA FROM STUDENT INFORMATION SYSTEMS, TESTING SERVICES,

AND OTHER SOURCES, SCHEDULING AND TRACKING TARGETED MAILINGS AND E-MAIL CAMPAIGNS, CONDUCTING SURVEYS THAT MEASURE COMMUNICATION EFFECTIVENESS, AND GENERATING REPORTS AND FREQUENCY TABULATIONS FROM THE SURVEY DATA; COMPUTER-BASED SERVICES, NAMELY COMPUTER PROGRAMMING, DEVELOPING, IMPLEMENTING, AND PROVIDING A NON-DOWNLOADABLE WEB-BASED APPLICATION PROGRAM FOR OTHERS FOR PROVIDING INFORMATION AND ADVICE TO STUDENTS AND THEIR PARENTS REGARDING THE COLLEGE ADMISSIONS PROCESS, IN CLASS 42 (U.S. CLS. 100 AND 101).

FIRST USE 10-1-2002; IN COMMERCE 10-1-2002.

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

SER. NO. 76-642,662, FILED P.R. 7-12-2005; AM. S.R. 8-21-2006.

TINA BROWN, EXAMINING ATTORNEY

Int. Cl.: 6

Prior U.S. Cls.: 2, 12, 13, 14, 23, 25 and 50

Reg. No. 3,242,619

United States Patent and Trademark Office

Registered May 15, 2007

**TRADEMARK
PRINCIPAL REGISTER**

CONNECT

SAINT-GOBAIN ECOPHON B.V. (NETHER-
LANDS JOINT STOCK COMPANY)
PARALLELWEG 17
NL-4878 AH ETTEN-LEUR, NETHERLANDS

FOR: METAL LATTICES, RUNNERS, HANGERS,
PROFILES, NAMELY, BUILDING WALL AND
CEILING FRAMING PRIMARILY OF METAL,
GRID SYSTEM SUPPORTS OF METAL FOR CEIL-
INGS AND WALLS, TRIMS FOR BUILDING PUR-
POSES, METAL SPLICES FOR JOINING WALLS,
CEILINGS AND GRID SYSTEMS, CLIPS OF METAL

FOR SUSPENDED CEILINGS AND WALLS, IN
CLASS 6 (U.S. CLS. 2, 12, 13, 14, 23, 25 AND 50).

OWNER OF INTERNATIONAL REGISTRATION
0745328 DATED 9-29-2000, EXPIRES 9-29-2010.

SER. NO. 79-018,802, FILED 11-22-2005.

JENNIFER VASQUEZ, EXAMINING ATTORNEY

Int. Cl.: 11

Prior U.S. Cls.: 13, 21, 23, 31 and 34

Reg. No. 3,378,869

United States Patent and Trademark Office

Registered Feb. 5, 2008

**TRADEMARK
PRINCIPAL REGISTER**



COSMETAL SRL -; SISTEMI DI REFRIGERAZIONE (ITALY LIMITED LIABILITY COMPANY)

VIA F.III MAGGINI,

FRAZIONE ZONA PIP SAMBUCHETO; I-62019 RECANATI (MC)

ITALY

FOR: WATER REFRIGERATORS AND WATER FOUNTAINS, IN CLASS 11 (U.S. CLS. 13, 21, 23, 31 AND 34).

PRIORITY DATE OF 7-26-2006 IS CLAIMED.

OWNER OF INTERNATIONAL REGISTRATION 0906248 DATED 10-16-2006, EXPIRES 10-16-2016.

THE COLOR(S) RED, BLACK AND GRAY IS/ARE CLAIMED AS A FEATURE OF THE MARK.

THE WORDING APPEARS IN BLACK, EXCEPT FOR THE SECOND "N" WHICH APPEARS IN RED AND IS RINGED BY A GRAY CIRCLE.

THE MARK CONSISTS OF A CIRCUMFERENCE UPON WHICH IS IMPRESSED THE WORD "CONNECT" HAVING THE SECOND "N" IN RED COLOUR.

SER. NO. 79-032,007, FILED 10-16-2006.

JASON TURNER, EXAMINING ATTORNEY

Int. Cl.: 3

Prior U.S. Cls.: 1, 4, 6, 50, 51 and 52

Reg. No. 3,390,861

United States Patent and Trademark Office

Registered Mar. 4, 2008

**TRADEMARK
PRINCIPAL REGISTER**

Connect

MYRA P. AND COMPANY, INC. (FLORIDA
CORPORATION)
7313 SW 59 COURT
MIAMI, FL 33143

FIRST USE 1-13-2004; IN COMMERCE 1-13-2004.

THE MARK CONSISTS OF STANDARD CHAR-
ACTERS WITHOUT CLAIM TO ANY PARTICULAR
FONT, STYLE, SIZE, OR COLOR.

SER. NO. 77-073,205, FILED 12-29-2006.

FOR: BODY AND BEAUTY CARE PREPARA-
TIONS; BODY LOTIONS; HAIR CARE PREPARA-
TIONS; HAIR STYLING PREPARATIONS; MAKE-
UP; NON-MEDICATED BATH PREPARATIONS, IN
CLASS 3 (U.S. CLS. 1, 4, 6, 50, 51 AND 52).

REGINA DRUMMOND, EXAMINING ATTORNEY

Int. Cl.: 41

Prior U.S. Cls.: 100, 101, and 107

United States Patent and Trademark Office

Reg. No. 3,537,420

Registered Nov. 25, 2008

**SERVICE MARK
PRINCIPAL REGISTER**

CONNECT

SONY CORPORATION OF AMERICA (NEW
YORK CORPORATION)
550 MADISON AVENUE
NEW YORK, NY 10022

THE MARK CONSISTS OF STANDARD CHAR-
ACTERS WITHOUT CLAIM TO ANY PARTICULAR
FONT, STYLE, SIZE, OR COLOR.

FOR: ENTERTAINMENT SERVICES, NAMELY,
PROVIDING PRE-RECORDED MUSIC ON-LINE
VIA A GLOBAL COMPUTER NETWORK, IN CLASS
41 (U.S. CLS. 100, 101 AND 107).

SN 76-570,672, FILED 1-7-2004.

FIRST USE 5-31-2004; IN COMMERCE 5-31-2004.

MICHELE SWAIN, EXAMINING ATTORNEY

EXHIBIT B

to

**DECLARATION OF THOMAS COOK IN SUPPORT OF APPLICANT'S
RESPONSE TO OPPOSER'S MOTION FOR SUMMARY JUDGMENT**

Int. Cl.: 35

Prior U.S. Cls.: 100, 101, and 102

United States Patent and Trademark Office

Reg. No. 3,485,592

Registered Aug. 12, 2008

**SERVICE MARK
PRINCIPAL REGISTER**

ACCESS CONNECT ECOSYSTEM

ACCESS SYSTEMS AMERICAS, INC. (DELA-
WARE CORPORATION)
1188 EAST ARQUES AVENUE
SUNNYVALE, CA 94085

FOR: BUSINESS CONSULTING, MARKETING
AND PROMOTION SERVICES PROVIDED IN THE
NATURE OF A COMPUTER SOFTWARE DEVEL-
OPER PARTNER PROGRAM, NAMELY, PROVID-
ING PRODUCT INFORMATION ON COMPUTER
SOFTWARE TO COMPUTER SOFTWARE DEVEL-
OPERS FOR MARKETING PURPOSES, AND PRO-
VIDING MARKETING INFORMATION AND
MARKETING CONSULTING, ALL RELATED TO

COMPUTER SOFTWARE, IN CLASS 35 (U.S. CLS.
100, 101 AND 102).

FIRST USE 2-13-2007; IN COMMERCE 2-13-2007.

THE MARK CONSISTS OF STANDARD CHAR-
ACTERS WITHOUT CLAIM TO ANY PARTICULAR
FONT, STYLE, SIZE, OR COLOR.

SN 77-068,867, FILED 12-20-2006.

SHARON MEIER, EXAMINING ATTORNEY

United States of America

United States Patent and Trademark Office

ACXIOM CONNECT-X

Reg. No. 3,881,160

Registered Nov. 23, 2010

Int. Cls.: 35 and 42

SERVICE MARK

PRINCIPAL REGISTER

ACXIOM CORPORATION (DELAWARE CORPORATION)
601 E. THIRD ST.
LITTLE ROCK, AR 72201

FOR: DIRECT MARKETING SERVICES FOR OTHERS, NAMELY, DIRECT MARKETING CAMPAIGN MANAGEMENT AND DIRECT MARKETING LIST SELECTION, ACQUISITION, AND MAINTENANCE, IN CLASS 35 (U.S. CLS. 100, 101 AND 102).

FIRST USE 1-0-2010; IN COMMERCE 1-0-2010.

FOR: APPLICATION SERVICE PROVIDER FEATURING SOFTWARE IN THE FIELD OF DIRECT MARKETING CAMPAIGN MANAGEMENT AND DIRECT MARKETING LIST SELECTION, ACQUISITION, AND MAINTENANCE, IN CLASS 42 (U.S. CLS. 100 AND 101).

FIRST USE 1-0-2010; IN COMMERCE 1-0-2010.

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

OWNER OF U.S. REG. NOS. 1,907,571, 3,131,510, AND OTHERS.

SN 77-811,327, FILED 8-24-2009.

BRENDAN MCCAULEY, EXAMINING ATTORNEY



David J. Kyfos

Director of the United States Patent and Trademark Office

Int. Cls.: 35 and 42

Prior U.S. Cls.: 100, 101 and 102

United States Patent and Trademark Office

Reg. No. 2,915,521

Registered Jan. 4, 2005

**SERVICE MARK
PRINCIPAL REGISTER**

BROCADE CONNECT

BROCADE COMMUNICATIONS SYSTEMS, INC.
(CALIFORNIA CORPORATION)
1745 TECHNOLOGY DRIVE
SAN JOSE, CA 95110

FOR: MANAGING PRODUCT AND MARKET-
ING INITIATIVES FOR VALUE ADDED RESEL-
LERS AND PROVIDING CUSTOMER SUPPORT, IN
CLASS 35 (U.S. CLS. 100, 101 AND 102).

FIRST USE 5-15-2002; IN COMMERCE 5-15-2002.

FOR: TECHNICAL SUPPORT SERVICES, NAME-
LY, TROUBLESHOOTING OF COMPUTER HARD-
WARE AND SOFTWARE PROBLEMS AND

PROVIDING ACCESS TO FIRMWARE DOWN-
LOADS AND A PRODUCT KNOWLEDGE BASE,
IN CLASS 42 (U.S. CLS. 100 AND 101).

FIRST USE 5-15-2002; IN COMMERCE 5-15-2002.

NO CLAIM IS MADE TO THE EXCLUSIVE
RIGHT TO USE "CONNECT", APART FROM THE
MARK AS SHOWN.

SER. NO. 76-411,983, FILED 5-24-2002.

INGA ERVIN, EXAMINING ATTORNEY

Int. Cl.: 35

Prior U.S. Cls.: 100, 101 and 102

United States Patent and Trademark Office

Reg. No. 3,631,362

Registered June 2, 2009

**SERVICE MARK
PRINCIPAL REGISTER**

CONNECT AND SIMPLIFY

EXTREME REACH INC. (DELAWARE CORPORATION)
75 SECOND AVE SUITE 360
NEEDHAM, MA 02494

FOR: ADVERTISING AGENCIES; ADVERTISING AGENCIES, NAMELY, PROMOTING THE GOODS AND SERVICES OF OTHERS; ADVERTISING AND ADVERTISEMENT SERVICES; ADVERTISING AND COMMERCIAL INFORMATION SERVICES, VIA THE INTERNET; ADVERTISING AND MARKETING; ADVERTISING AND PROMOTIONAL SERVICES; ADVERTISING AND PUBLICITY SERVICES, NAMELY, PROMOTING THE GOODS, SERVICES, BRAND IDENTITY AND COMMERCIAL INFORMATION AND NEWS OF THIRD PARTIES THROUGH PRINT, AUDIO, VIDEO, DIGITAL AND ON-LINE MEDIUM; ADVERTISING PARTICULARLY SERVICES FOR THE PROMOTION OF GOODS; ADVERTISING SERVICES; ADVERTISING SERVICES OF A RADIO AND TELEVISION ADVERTISING AGENCY; ADVERTISING SERVICES, NAMELY, PROMOTING AND MARKETING THE GOODS AND SERVICES OF OTHERS THROUGH ALL PUBLIC COMMUNICATION MEANS; ADVERTISING THROUGH ALL PUBLIC COMMUNICATION MEANS; ADVERTISING VIA ELECTRONIC MEDIA AND SPECIFICALLY THE INTERNET; ADVERTISING, INCLUDING PROMOTION RELATING TO THE SALE OF ARTICLES AND SERVICES FOR THIRD PARTIES BY THE TRANSMISSION OF ADVERTISING MATERIAL AND THE DISSEMINATION OF ADVERTISING MESSAGES ON COMPUTER NETWORKS; ADVERTISING, MARKETING

AND PROMOTION SERVICES; DISSEMINATION OF ADVERTISEMENTS; DISSEMINATION OF ADVERTISING FOR OTHERS VIA AN ON-LINE COMMUNICATIONS NETWORK ON THE INTERNET; DISSEMINATION OF ADVERTISING FOR OTHERS VIA THE INTERNET; DISSEMINATION OF ADVERTISING MATTER; DISTRIBUTION OF ADVERTISEMENTS AND COMMERCIAL ANNOUNCEMENTS; DISTRIBUTION OF PRODUCTS FOR ADVERTISING PURPOSES; INTERNET ADVERTISING SERVICES; ON-LINE ADVERTISING AND MARKETING SERVICES; ON-LINE ADVERTISING ON COMPUTER COMMUNICATION NETWORKS; PREPARATION OF CUSTOM OR NON-CUSTOM ADVERTISING FOR BUSINESSES FOR DISSEMINATION VIA THE WEB, CD OR DVD FOR OPTIONAL UPLOAD OR DOWNLOAD TO A COMPUTER; PREPARING ADVERTISEMENTS FOR OTHERS; PROMOTING THE GOODS AND SERVICES OF OTHERS BY DISTRIBUTING ADVERTISING MATERIALS THROUGH A VARIETY OF METHODS, IN CLASS 35 (U.S. CLS. 100, 101 AND 102).

FIRST USE 11-27-2008; IN COMMERCE 12-1-2008.

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

SER. NO. 77-643,734, FILED 1-6-2009.

SIMON TENG, EXAMINING ATTORNEY

Int. Cls.: 35 and 37

Prior U.S. Cls.: 100, 101, 102, 103 and 106

United States Patent and Trademark Office

Reg. No. 2,538,323

Registered Feb. 12, 2002

**SERVICE MARK
PRINCIPAL REGISTER**



HOME CONTROLS INCORPORATED (CALIFORNIA CORPORATION)
7626 MIRAMAR ROAD, SUITE 3300
SAN DIEGO, CA 921264216

FOR: INSTALLATION AND REPAIR OF AUTOMATION, CONTROL, SECURITY, ENTERTAINMENT, AND NETWORKING EQUIPMENT, IN CLASS 37 (U.S. CLS. 100, 103 AND 106).

FOR: COOPERATIVE ADVERTISING AND MARKETING SERVICES FOR DEALERS WHO INSTALL AND REPAIR AUTOMATION, CONTROL, SECURITY, ENTERTAINMENT, AND NETWORKING EQUIPMENT, IN CLASS 35 (U.S. CLS. 100, 101 AND 102).

FIRST USE 3-1-2001; IN COMMERCE 3-1-2001.

SER. NO. 76-298,200, FILED 8-9-2001.

FIRST USE 3-1-2001; IN COMMERCE 3-1-2001.

ROBERT COGGINS, EXAMINING ATTORNEY

United States of America

United States Patent and Trademark Office

CONNECTIVA

Reg. No. 3,941,338

Registered Apr. 5, 2011

Int. Cls.: 9, 35, and 42

TRADEMARK

SERVICE MARK

PRINCIPAL REGISTER

CONNECTIVA SYSTEMS, INC. (NEW YORK CORPORATION)
19 WEST 44TH STREET, SUITE 611
NEW YORK, NY 10036

FOR: COMPUTER SOFTWARE FOR COLLECTING CUSTOMER DATA AND CONDUCTING ANALYTICS ON THE DATA, NAMELY, REVENUE ASSURANCE SOLUTIONS FOR ASSURING THAT REVENUE IS BEING RECEIVED AND FOR FRAUD AND RISK MANAGEMENT, SYSTEMS INTEGRATION SOLUTIONS, ANALYTICS FOR MARKETING AND CUSTOMER MANAGEMENT AND FOR ASSURING THAT SERVICES WERE DELIVERED, COMPUTER SOFTWARE AND HARDWARE AND COMPUTER PERIPHERAL EQUIPMENT FOR BILLING VERIFICATION, FRAUD DETECTION, MONITORING, MEASURING, ANALYZING, SECURITY MANAGING, NETWORK SURVEILLANCE, SIGNAL CLASSIFICATION, TRAFFIC MANAGING, CREATING AND MONITORING CALL DETAILED RECORDS, FRAUD DETECTION AND REPORTING INFORMATION EXTRACTED FROM NETWORKS, SWITCHES, OPERATING SYSTEMS, BASE STATIONS, BASE STATIONS' CONTROLLERS, PROBE MEDIATION PLATFORMS AND/OR BUSINESS SUPPORT SYSTEMS, IN CLASS 9 (U.S. CLS. 21, 23, 26, 36 AND 38).

FIRST USE 1-17-2006; IN COMMERCE 1-17-2006.

FOR: BUSINESS MANAGEMENT CONSULTING SERVICES, NAMELY, PROVIDING REVENUE ASSURANCE, BUSINESS FRAUD MANAGEMENT, RISK MANAGEMENT AND ANALYTICS OF CUSTOMER DATA; OUTSOURCING IN THE FIELD OF NETWORK MANAGEMENT, IN CLASS 35 (U.S. CLS. 100, 101 AND 102).

FIRST USE 1-17-2006; IN COMMERCE 1-17-2006.

FOR: DESIGN AND IMPLEMENTATION OF SOFTWARE SOLUTIONS FOR THE PURPOSE OF PROVIDING REVENUE ASSURANCE, FRAUD MANAGEMENT, RISK MANAGEMENT AND ANALYTICS OF CUSTOMER DATA, IN CLASS 42 (U.S. CLS. 100 AND 101).

FIRST USE 1-17-2006; IN COMMERCE 1-17-2006.

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

SN 77-772,401, FILED 7-1-2009.

HOWARD B. LEVINE, EXAMINING ATTORNEY



David J. Kyros

Director of the United States Patent and Trademark Office

Int. Cl.: 9

Prior U.S. Cls.: 21, 23, 26, 36 and 38

United States Patent and Trademark Office

Reg. No. 3,352,403

Registered Dec. 11, 2007

**TRADEMARK
PRINCIPAL REGISTER**

CONNECTS

SPECTRUM CONTROLS, INC. (WASHINGTON
CORPORATION)
1705 132ND AVENUE NE
BELLEVUE, WA 98005

THE MARK CONSISTS OF STANDARD CHAR-
ACTERS WITHOUT CLAIM TO ANY PARTICULAR
FONT, STYLE, SIZE, OR COLOR.

FOR: COMPUTER SOFTWARE THAT ENABLES
VARIOUS USER APPLICATIONS TO COMMUNI-
CATE WITH ONE OR MORE HARDWARE DEVI-
CES, IN CLASS 9 (U.S. CLS. 21, 23, 26, 36 AND 38).

SER. NO. 78-952,189, FILED 8-15-2006.

FIRST USE 10-15-2002; IN COMMERCE 10-15-2002.

KATHERINE CHANG, EXAMINING ATTORNEY

United States of America

United States Patent and Trademark Office

CONNECTUAL

Reg. No. 3,701,558 CONNECTUAL, INC. (ILLINOIS CORPORATION)
Registered Oct. 27, 2009 1757 N. PAULINA ST. UNIT D
CHICAGO, IL 60622

Int. Cl.: 35 FOR: PROVIDING INFORMATION IN THE FIELD OF MARKETING AND ON-LINE MARKETING MEDIA VIA THE INTERNET; PROVIDING CONSULTING SERVICES IN THE FIELD OF FACILITATING THE PLANNING, BUYING, AND SELLING OF MEDIA; PREPARATION AND REALIZATION OF MEDIA AND ADVERTISING PLANS AND CONCEPTS; PROVIDING PROMOTIONAL MARKETING SERVICES TO BUSINESSES IN THE BROADBAND AND MEDIA INDUSTRIES; MEDIA BUYING ADVICE, NAMELY, ADVISING THE CLIENT HOW MUCH MEDIA TIME, AND AT WHAT TIMES THE CLIENT SHOULD BE PURCHASING ADVERTISING; ADVERTISING AND PUBLICITY SERVICES, NAMELY, PROMOTING THE GOODS, SERVICES, BRAND IDENTITY AND COMMERCIAL INFORMATION AND NEWS OF THIRD PARTIES THROUGH DIGITAL AND ON-LINE MEDIUM; ON-LINE ADVERTISING AND MARKETING SERVICES; ADVERTISING, MARKETING AND PROMOTION SERVICES; ADVERTISING AND MARKETING, MARKETING PLAN DEVELOPING; MARKETING CONSULTING; PROMOTION AND MARKETING SERVICES AND RELATED CONSULTING; BUSINESS MARKETING SERVICES; BUSINESS MARKETING CONSULTING SERVICES; DEVELOPMENT OF MARKETING STRATEGIES AND CONCEPTS; MARKETING PLAN DEVELOPMENT; DEVELOPMENT OF MARKETING STRATEGIES AND CONCEPTS; ADVICE IN THE FIELDS OF BUSINESS MANAGEMENT AND MARKETING; BUSINESS ADVICE AND INFORMATION; BUSINESS CONSULTATION, IN CLASS 35 (U.S. CLS. 100, 101 AND 102).

SERVICE MARK
PRINCIPAL REGISTER

FIRST USE 1-1-2009; IN COMMERCE 1-1-2009.

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

SER. NO. 77-711,681, FILED 4-10-2009.

JULIE GUTTADAURO, EXAMINING ATTORNEY



David J. Kyffers

Director of the United States Patent and Trademark Office

Int. Cl.: 35

Prior U.S. Cls.: 100, 101 and 102

United States Patent and Trademark Office

Reg. No. 3,397,130

Registered Mar. 18, 2008

**SERVICE MARK
PRINCIPAL REGISTER**



CHINNICI DIRECT, INC. (DELAWARE CORPORATION)
411 LAFAYETTE ST. 3RD FLOOR
NEW YORK, NY 10003

FOR: ADVERTISING, MARKETING AND PROMOTION SERVICES, IN CLASS 35 (U.S. CLS. 100, 101 AND 102).

THE MARK CONSISTS OF THE WORDS "COMPANY C", ALONG WITH A STYLIZED LETTER "C" ON ITS SIDE, AS WELL AS THE WORDS "CREATE CONNECT COMPEL".

SER. NO. 77-060,042, FILED 12-8-2006.

FIRST USE 10-15-2006; IN COMMERCE 10-15-2006.

STEPHEN AQUILA, EXAMINING ATTORNEY

Int. Cls.: 35 and 42

Prior U.S. Cls.: 100, 101 and 102

United States Patent and Trademark Office

Reg. No. 3,434,071

Registered May 27, 2008

**SERVICE MARK
PRINCIPAL REGISTER**

HY CONNECT

HOFFMAN YORK, INC. (WISCONSIN CORPORATION)

1000 N. WATER STREET

MILWAUKEE, WI 53202

FOR: INTERACTIVE MEDIA SERVICES FOR COMPANIES, NAMELY, DIRECT MARKETING, CREATION OF ON-LINE ADVERTISING AND MARKETING, MARKET RESEARCH, CREATIVE MARKETING DESIGN SERVICES, CUSTOMER RELATIONSHIP DATABASE ANALYSIS AND CONSULTING, IN CLASS 35 (U.S. CLS. 100, 101 AND 102).

FIRST USE 1-15-1999; IN COMMERCE 1-15-1999.

FOR: INTERACTIVE MEDIA SERVICES FOR COMPANIES, NAMELY, WEBSITE DESIGN AND DEVELOPMENT FOR MARKETING, IN CLASS 42 (U.S. CLS. 100 AND 101).

FIRST USE 1-15-1999; IN COMMERCE 1-15-1999.

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

SER. NO. 77-119,379, FILED 3-1-2007.

ANNE FARRELL, EXAMINING ATTORNEY

Int. Cl.: 35

Prior U.S. Cls.: 100, 101 and 102

United States Patent and Trademark Office

Reg. No. 3,328,332

Registered Nov. 6, 2007

**SERVICE MARK
PRINCIPAL REGISTER**

TARGET CONNECT

BRIAN UNLIMITED DISTRIBUTION COMPANY
(MICHIGAN CORPORATION)
13700 OAKLAND AVENUE
HIGHLAND PARK, MI 48203

FIRST USE 10-6-2005; IN COMMERCE 10-6-2005.

FOR: BUSINESS MARKETING CONSULTING
SERVICES IN THE NATURE OF PROVIDING PRO-
MOTIONAL SERVICES AND EQUIPMENT TO OTH-
ERS FOR INDEPENDENT USE THEREOF,
NAMELY RENTAL OF OFFICE MACHINERY
AND EQUIPMENT, IN CLASS 35 (U.S. CLS. 100, 101
AND 102).

THE MARK CONSISTS OF STANDARD CHAR-
ACTERS WITHOUT CLAIM TO ANY PARTICULAR
FONT, STYLE, SIZE, OR COLOR.

SER. NO. 77-013,117, FILED 10-4-2006.

ALICE BENMAMAN, EXAMINING ATTORNEY